

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LAURENS COUNTY
Court of General Sessions
The Honorable Robert Addy, Jr., Circuit Court Judge

Appellate Case No: 2011-187128

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AUG 21 2013

S.C. Supreme Court

THE STATE,

PETITIONER,

v.

RICHARD BRANDON LEWIS,

RESPONDENT.

APPENDIX
VOLUME 2 OF 3

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INDEX

RECORD ON APPEAL VOLUME 1.....	1
RECORD ON APPEAL VOLUME 2.....	499
RECORD ON APPEAL VOLUME 3.....	994
FINAL BRIEF OF APPELLANT.....	1225
FINAL BRIEF OF RESPONDENT.....	1252
OPINION.....	1276
PETITION FOR REHEARING.....	1286
RETURN TO PETITION FOR REHEARING.....	1296
REPLY TO PETITION FOR REHEARING.....	1301
ORDER DENYING PETITION.....	1307

1 interacting with people.

2 Q And why is it important to know when she was last
3 seen acting normal or interacting with people.

4 A Because with those type of head injuries most
5 children are not acting normal, playing with their toys.
6 And the people that are last around, you need to start
7 ruling people out.

8 Q And so, if I understand Mr. Wise's question
9 correctly, how is it that you were able to rule out other
10 people such as the father, Daniel Hepburn.

11 MR. WISE: Your Honor, I don't believe she was ruling
12 out anybody, I only have, I just asked if Ms. Hepburn made
13 the accusation. I didn't ask about ruling anybody out.

14 MS. MAYES: That is my question, Your Honor.

15 THE COURT: I believe that what Ms. Mayes is getting
16 at is perhaps an implication involved here with the line
17 of questioning. I will permit you--

18 MR. WISE: Can we approach for one second?

19 THE COURT: Yes.

20 (Whereupon, a bench conference was held in the
21 presence of the jury but out of the hearing of the
22 jury.)

23 Q So, as a result of information that you said
24 perviously you spoke with medical personnel in this case?

25 A Yes, ma'am.

1 Q Is it possible to estimate how many different members
2 of medical personnel you spoke with?

3 A Prior to Ashley Hepburn's interview?

4 Q Right.

5 A Three or four.

6 Q Is it possible to estimate how many medical personnel
7 you spoke with about Victim case prior to today?

8 A Twenty, twenty-five.

9 Q And based on your understanding of the evidence in
10 this case was there a need to focus on any other
11 individuals?

12 A No, ma'am.

13 Q Was there ever any indication of an intruder on the
14 night of October 12th of 2009 in the home at Cross Hill?

15 A No, ma'am.

16 Q Or the early morning hours of October 13th of 2009 at
17 the home in Cross Hill?

18 A No, ma'am.

19 Q Was there ever any indication that Daniel Hepburn,
20 the biological father had been inside the home within the
21 last four days?

22 A No, ma'am.

23 Q Or can you tell us whether or not there would be any
24 indication that Daniel Hepburn or Rita Hepburn or any
25 other member of the Hepburn family had contact with

1 Victim Hepburn in the last four days?

2 A No, they did not.

3 Q Now, I want to refer you to the question that Mr.
4 Wise or Mr. Able was asking you about the bruises that you
5 spoke with Ashley about. Do you have with you notes
6 regarding that?

7 A Yes, ma'am.

8 Q What was the context in which you questioned Ms.
9 Hepburn about the bruises, about any possible bruises on
10 Victim ?

11 A Had she had any previous bruising, injuries.

12 Q And what did she indicate?

13 A She had a slight bruise on the chin, bruise on the
14 stomach. And asked, you know, did she cry when she would
15 fall and she said that she does not cry when she falls.

16 Q Why were you asking if she cries when she falls?

17 A To see if she was injured previously would she cry if
18 she fell.

19 Q Based on the context of your notes what is your
20 understanding the conversation with Ms. Hepburn concerning
21 the chin bruise and the stomach bruise?

22 A Can you repeat that?

23 Q What is the context in which you were discussing the
24 chin bruise and the stomach bruise with Ms. Hepburn?

25 A Were there any bruises previously.

1 Q Nothing further.

2 RECROSS-EXAMINATION

3 By Mr. Able: . .

4 Q Now, where does it say there were bruises previously,
5 it doesn't say that, does it?

6 A No, sir.

7 Q Just says slight bruise on chin, bruise on stomach?

8 A I write the answers.

9 Q Correct... That is what it says, it doesn't say--

10 A It says slight bruise on chin, bruise on stomach and
11 does not cry when she falls.

12 Q Okay. So, it doesn't say anything in your
13 handwritten notes from that day, does not say what context
14 the question was asked in?

15 A Correct.

16 Q And your question is not written on here, is it?

17 A Correct.

18 Q And as I stated earlier, she was at the hospital and
19 would have seen these bruises on the child?

20 A I was never in there when she saw the child.

21 Q Nothing further.

22 THE COURT: Ma'am, you can step down. Thank you very
23 much. Ms. Mayes, Mr. Able, Mr. Wise, y'all approach real
24 quick, please.

25

1 (Whereupon, a bench conference was held in the
2 presence of the jury but out of the hearing of the
3 jury.)

4 THE COURT: Ms. Mayes, call your next witness.

5 MS. MAYES: The State calls Janice Bryson to the
6 stand.

7 Janice Bryson, after being duly sworn,
8 testified as follows:

9 DIRECT EXAMINATION

10 By Ms. Mayes:

11 Q Agent Bryson, where are you employed and in what
12 regard?

13 A I am employed by the South Carolina Law Enforcement
14 Division. I am a forensic technician in the evidence
15 processing unit of the DNA department.

16 Q And how long have you been with the State Law
17 Enforcement Division?

18 A 21 years.

19 Q And what type of work do you do there?

20 A I work in the evidence processing department. And
21 whenever items of evidence are submitted to the law with a
22 request to look for hair, fiber, blood or semen it is my
23 responsibility to collect the evidence and make sure it is
24 sent to the appropriate departments.

25 Q All right. And can you tell us some information

1 concerning your educational background and training?

2 A I have a two year degree in secretarial science.

3 While at SLED I trained under court qualified forensic

4 experts in the areas of serology, trace and DNA. And SLED

5 is nationally accredited by the American Society of Crime

6 Laboratory Directors. And it is a requirement of ASCLD ,

7 that each analyst and technician be certified and I have

8 been certified in the collection of hair, fiber, blood and

9 semen.

10 Q Have you testified previously in a South Carolina

11 Court concerning evidence processing?

12 A Yes, I have.

13 Q Is it possible for you to estimate how many such

14 times you have testified?

15 A Approximately 75.

16 MS. MAYES: Your Honor, at this time the State would

17 offer Janice Bryson as an expert in the field of evidence

18 processing.

19 THE COURT: Any objection?

20 MR. ABLE: No objection.

21 MR. WISE: I don't know if that is an expert field to

22 be frank with the Court. But I have no objection if that

23 is what she is going to testify to.

24 THE COURT: So you don't have an objection to her

25 being qualified as an expert in this field, Mr. Wise?

1 MR. WISE: I guess I really don't.

2 THE COURT: Ladies and gentlemen of the jury, the
3 State and the attorneys have stipulated that Ms. Bryson is
4 an expert in the field of evidence processing. Again, as
5 I have explained to you with the previous expert
6 witnesses, that means she possesses a certain training for
7 expertise with her education which would allow her to give
8 an opinion in her field. Normally witnesses aren't
9 permitted to do that when one testifies, they can only
10 testify as to their senses. You are free to accept it or
11 reject it based upon your view of the evidence as a whole.
12 Ms. Mayes, you may continue.

13 MS. MAYES: Yes sir, Your Honor.

14 Q Agent Bryson, can you tell us whether or not evidence
15 was submitted in this particular case which involved the
16 death of Victim Hepburn?

17 A Yes, it was.

18 Q And do you have with you the information concerning
19 how the evidence was submitted?

20 A Yes, I do.

21 Q What can you tell us about any efforts made to secure
22 or preserve evidence as it is originally found?

23 A Whenever evidence are brought into the lab the
24 technician in the evidence control department, they
25 operate on a safe to contain basis. So, they have the

1 officers seal the evidence and initial it and date it and
2 they enter the information into the computer and they
3 assign a lab number, and that lab number will follow that
4 evidence throughout the lab.

5 Q And in this particular case can you tell us what
6 items were submitted to the State Law Enforcement Division
7 for forensic analysis?

8 A You want me to list the items that I tested?

9 Q Yes.

10 A A fitted crib sheet, a small towel, a blanket, two
11 blankets, a bumper pad from the crib and a onesie.

12 Q I am going to show you some items and ask you whether
13 or not you recognize them?

14 A Yes, I do..

15 Q And how do you recognize them?

16 A Well, at the time the pictures were taken I put my
17 initials on the items but it matches the description on my
18 worksheet.

19 Q I am going to show you some additional photographs
20 and ask you if you recognize them?

21 A Yes, I do.

22 Q And how so?

23 A This was processed in my evidence room at the lab.

24 Q And what is the procedure for taking a photo such as
25 these at the SLED lab in order to document evidence as it

1 is being processed?

2 A It gives you a good description of the items of the
3 evidence before I make my cuttings.

4 MS. MAYES: Your Honor, at this time the State would
5 offer these items as exhibits and I do not have the
6 numbers.

7 MR. WISE: No objection.

8 MR. ABLE: No objection.

9 THE COURT: Without objection that will be State's 52
10 through 58 admitted.

11 (Whereupon, State's Exhibits 52 - 58 were admitted
12 into evidence.)

13 Q Do you have with you your records concerning which
14 items were initially processed?

15 A Yes, I do.

16 Q All right. I am going to show you a photograph and
17 ask you what we are looking at in this photograph?

18 A I processed the blanket that was pink in color. The
19 brand name is George.

20 Q And according to your report was there any evidence
21 of evidentiary value found in this particular item?

22 A I had written on my worksheet there was no visible
23 blood and I took one cutting that was possible saliva.

24 Q And this particular items, State's exhibit 53.

25 A Okay. This is item 4, it is a blanket, it was pink

1 floral on one side and the opposite is pink. And the
2 brand name is Starting Out.

3 Q And any information of serological value?

4 A I took one cutting that was possible saliva from the
5 pink side.

6 Q And this is State's exhibit 54. What are we looking
7 at in this photograph?

8 A That appears to be the fitted sheet, it was pink,
9 green, yellow and white in color.

10 Q This is State's exhibit 57. What are we looking at
11 in this photo?

12 A That is a bumper pad from the crib.

13 Q State's exhibit 55, what are we looking at?

14 A It is the opposite side of the bumper pad.

15 Q State's exhibit 58?

16 A It is a small towel.

17 Q All right. Now, this particular item, the towel,
18 what if anything of serological value was discovered?

19 A I took two cuttings that was positive for the
20 presumptive test of blood and also possible saliva.

21 Q So two cuttings was possible blood from this white
22 towel?

23 A That is correct.

24 Q And what if any other items of serological value were
25 discovered?

1 A On what item?

2 Q As to blood or possible blood?

3 A The small towel, the bumper pad from the crib and the
4 onesie.

5 Q And what is the description of the bumper pad from
6 the crib that contained the possible blood?

7 A It is SLED's item number 5, it is a bumper pad from
8 crib, pink, tan, beige and brown in color. The brand name
9 is George.

10 Q Does that appear to be the item?

11 A Yes, ma'am.

12 Q When or at the point that you discovered possible
13 blood what if anything was done next?

14 A I do the presumptive test for blood which is the
15 screening for blood. And I cut that area out, give it a
16 subitem number, place the cutting in a heat sealed, in a
17 small coin envelope. I label it and then I seal the
18 envelope, put it in a heat sealed pouch, seal it, initial
19 it and date it and send it to the DNA department for
20 further analysis.

21 Q All right. And was that done in this particular
22 case?

23 A Yes, it was.

24 Q Are cuttings made?

25 A Yes.

1 Q And for what purpose?

2 A To send it to the DNA department for further
3 analysis.

4 Q I am going to show you some items and ask you whether
5 or not you recognize them.

6 A Yes, I do.

7 Q How so?

8 A This is the heat sealed pouch I generated to send the
9 cuttings to the DNA department. And this is the heat
10 sealed pouch I generated to send one cutting to the trace
11 department.

12 Q All right.

13 A And this was also the heat sealed pouch I generated
14 to send to the DNA department. It has my name, SLED lab
15 number and where I date and seal the heat sealed pouches.

16 MS. MAYES: Your Honor, at this time these three
17 items would be for evidence.

18 THE COURT: Any objection, Mr. Able or Mr. Wise?

19 MR. ABLE: No objection.

20 MR. WISE: No objection.

21 THE COURT: Without objection those should be 59, 60
22 and 61?

23 COURT REPORTER: Yes, sir.

24 (Whereupon, State's Exhibit 59 - 61 were admitted
25 into evidence.)

1 MS. MAYES: Nothing further.

2 MR. ABLE: No questions, Your Honor.

3 MR. WISE: No questions.

4 THE COURT: No objection to excuse this witness?

5 MS. MAYES: No, Your Honor..

6 MR. ABLE: No, sir.

7 MR. WISE: No objection.

8 THE COURT: Thank you for coming and you are free to
9 go.

10 MS. MAYES: The State calls Ila Simmons.

11 Ila Simmons, after being duly sworn,
12 testified as follows:

13 DIRECT EXAMINATION

14 By Ms. Mayes:

15 Q Agent Simmons, what is your job responsibility at the
16 State Law Enforcement Division?

17 A I work in the trace evidence department.

18 Q And how long have you been there?

19 A Eleven years.

20 Q Tell us what is meant by trace evidence?

21 A We analyze gunshot residue, we analyze gun powder
22 residue, residue fiber comparisons, paint comparisons, we
23 also analyze glass, explosive residues and we perform
24 trace evidence in cases. It is where if something is
25 found at a scene and it is a questionable item at a scene

1 we try to analyze it and try to identify or compare it
2 back to a known standard.

3 Q And what is your educational background and training?

4 A I have a Bachelors of Science Degree in Chemistry.
5 After completing that I came to work at SLED and for the
6 first three years I worked with a court qualified SLED
7 certified trace evidence examiner. He taught me how to
8 analyze trace evidence. I had to complete with
9 one-hundred percent efficiency written and practical
10 examinations.

11 MS. MAYES: Your Honor, at this time--

12 Q Have you testified previously as an analyst in the
13 field of trace examination?

14 A Yes ma'am, I have.

15 MS. MAYES: Your Honor, at this time the State would
16 offer Ila Simmons as an expert in the field of trace
17 analysis.

18 MR. WISE: No objection.

19 MR. ABLE: No objection.

20 THE COURT: Ladies and gentlemen of the jury, this
21 expert is Ila Simmons and has been stipulated to as an
22 expert in the field of trace evidence analysis. You may
23 receive her opinion and give it the weight that you feel
24 is appropriate. Obviously, she can give opinion
25 testimony, you are not required to accept it, you are not

1 required to reject it. You may use it in a manner you see
2 fit. Ms. Mayes.

3 Q Ms. Simmons, how did you become involved in the case
4 concerning analysis of certain items removed in connection
5 with the death of Victim Hepburn?

6 A It was believed that there was an unknown stain on a
7 piece of clothing that belonged to the victim. And at
8 that time they requested that I look at the stain and see
9 if I could determine what caused the stain.

10 Q And just to clarify, what type of clothing are we
11 referencing?

12 A It was what is known as a onesie, it is like a one
13 piece garment type body suit that small children wear.

14 Q And in this particular situation if there is a stain
15 and it is determined not to be blood and not to be saliva
16 what other efforts can be made to try and identify that
17 stain?

18 A We can take the stain and try to extract it into a
19 solvent and then place it on our instrumentation and see
20 if our instrumentation can give us an idea of what it may
21 be.

22 Q All right. And in this particular case did you have
23 the opportunity to observe the onesie that had been worn
24 by Victim Hepburn at the time she was injured?

25 A Yes, ma'am.

1 Q And were you able to make any observations as to the
2 source of the stain?

3 A There was a small area that Jan Bryson and I looked
4 at the onesie together and we looked at it under an
5 alternate night light source which is similar to a black
6 light. And we saw a very small area of a stain on the
7 sleeve area, and it was removed and I tried to extract this
8 in our solvent and place it on the instrumentation.

9 Q And for what purpose did you attempt to extract the
10 stain or fragments from the stain for further analysis?

11 A I was trying to determine what may have caused it,
12 what may have put the stain there.

13 Q And what, if anything, can you tell us about the
14 results of that attempt?

15 A When I attempted to remove it into the solvent the
16 stain was not extracted into the solvent. That could
17 possibly have meant that by the time that I had received
18 the evidence, the object, the garment had been laundered.
19 In some way, it had been washed in some way and maybe the
20 stain was caused at some time before so that the garment
21 was then laundered. And then our solvents would not have
22 extracted anything from the stain, it would have come out
23 in the laundry detergent.

24 Q Were you ever able to determine the source of that
25 particular stain on that item of clothing?

1 A No.

2 Q Thank you, nothing further.

3 MR. ABLE: No questions.

4 MR. WISE: No questions.

5 THE COURT: You can step down and any objection to
6 Ms. Simmons being released?

7 MS. MAYES: Nothing from the State, Your Honor.

8 MR. ABLE: No, sir.

9 MR. WISE: No objection.

10 THE COURT: You are released, Ms. Simmons, thank you
11 for coming.

12 MS. MAYES: The State calls Matt Fitts.

13 Matt Fitts, after being duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION

16 By Ms. Mayes:

17 Q Agent Fitts, can you start by telling us a little bit
18 of information about yourself. Where do you work?

19 A I work with South Carolina State Law Enforcement
20 Division in the forensic DNA and serology department.

21 Q And how long have you been with the State Law
22 Enforcement Division as a forensic scientist?

23 A Approximately 14 years.

24 Q What can you tell us about your educational
25 background and training?

1 A I received my BS in Doctorate in microbiology from
2 Clemson University. I spent three years at St. Jude's
3 Children's Research Hospital, five years at the National
4 Institutes of Health and fourteen years at SLED's forensic
5 DNA and serology lab.

6 Q And have you testified previously as an expert in the
7 field of DNA analysis?

8 A Yes, I have.

9 Q And does that include in the criminal courts of South
10 Carolina?

11 A Yes.

12 MS. MAYES: Your Honor, at this time the State would
13 offer Matt Fitts as an expert in the field of DNA
14 analysis.

15 MR. ABLE: No objection.

16 MR. WISE: No objection.

17 THE COURT: Ladies and gentlemen, Mr. Fitts here has
18 been qualified as an expert in the field of DNA analysis.
19 He can give an opinion in that field. It does not mean
20 that you must accept his opinion but you may give it the
21 weight that you do feel is appropriate based upon your
22 view of the record as a whole. Ms. Mayes.

23 MS. MAYES: Yes sir, Your Honor.

24 Q Can you begin by telling us what is meant by the term
25 DNA or deoxyribonucleic acids?

1 A It is compound that is found in all of your nucleated
2 cells and half of which you inherit from your mom and half
3 of which you inherit from your dad.

4 Q And what, if anything, is the significance of DNA
5 when it comes to forensic identity testing?

6 A Well, it is the gold standard for human
7 identification by looking at sites, a variety of sites in
8 your DNA molecule we can identify, it has become the gold
9 standard for human identification.

10 Q And is it possible to match a person's blood or, the
11 DNA of a person's blood or saliva to other items such as
12 items found at a crime scene?

13 A Yes, it is. I mean, that is the purpose of our
14 laboratory. It is to identify biological material
15 recovered from crime scenes, attempt to develop a DNA
16 profile from that material and then also receive standards
17 from known individuals, either a buccal swab or a blood
18 sample. Develop a DNA profile from that sample and will
19 compare that DNA profile to the DNA profile developed from
20 the biological material at the crime scene and attempt to
21 determine whether you can include or exclude someone as a
22 possible contributor to that biological material.

23 Q Can you tell us how you became involved in the case
24 of Victim [REDACTED] Hepburn?

25 A Well, as cases get assigned, we have approximately

1 ten DNA analysts at SLED and cases get assigned by
2 rotation. And this particular case just was assigned to
3 me.

4 Q And in this particular case were you aware that it
5 involved a child?

6 A Yes, I was.

7 Q And what type of items were you looking at or
8 submitted to the DNA lab for further analysis?

9 A Well, there were cuttings that were supplied to the
10 DNA lab. They were cuttings from a fitted sheet from a
11 crib. They were cuttings from a towel recovered from a
12 crib, cuttings from a pink blanket that were recovered
13 from the crib, cuttings from a multicolored blanket, from
14 a bumper pad and from a onesie outfit.

15 Q Now, you mentioned a towel, specifically do your
16 notes reflect the color of the towel and where the towel
17 came from?

18 A They don't reflect the color, oh, yes they do. One
19 white towel from crib.

20 Q So, you had a white towel from crib. What, if
21 anything, else was determined to have come directly from
22 the crib?

23 A There was a fitted sheet from the crib. There was a
24 pink blanket recovered from the crib. A multicolored
25 blanket from the crib. That is all that is labeled from

1 coming from the crib.

2 Q And do your notes reflect whether or not anything
3 termed as a bumper or a crib bumper was recovered?

4 A Yes. One pink crib bumper, sorry.

5 Q All right. Let me again, Agent Fitts, with this
6 particular item, State's exhibit 58. Let me ask you what,
7 if any, cuttings were developed from the white towel from
8 the crib?

9 A There were two cuttings made from that towel by Jan
10 Bryson.

11 Q And in connection with this particular item, you
12 mentioned there were two cuttings?

13 A Yes.

14 Q What, if anything, was done to determine whether or
15 not there was anything of serological value on that
16 particular towel?

17 A I ran two serology test on those cuttings. One to
18 detect the presence of blood and one to detect the
19 presence of saliva. And I ran those serology test and
20 they were both positive for those cuttings from that
21 towel.

22 Q So, once the cuttings are made you conduct further
23 analysis to determine exactly what the substance is, is
24 that correct?

25 A That is correct.

1 Q And what, if anything, did you learn in that regard?

2 A I am sorry, from these cuttings from the towel?

3 Q Yes.

4 A The presence of blood was identified and the presence
5 of saliva.

6 Q And when you talk about the presence of blood how do
7 you go about identifying who the blood has come from?

8 A Once we identify the biological material then we
9 extract the DNA from that material and develop a DNA
10 profile from it.

11 Q And in this particular case whose DNA profile was the
12 blood determined to be?

13 A The DNA profile developed from those two cuttings
14 matched the DNA profile of Audrina Hepburn.

15 Q Those are the cuttings from the towel?

16 A That is correct.

17 Q That was in at least two locations?

18 A Yes, it was.

19 Q Did your testing indicate whether or not there was
20 any other substance mixed with the blood?

21 A Saliva was also indicated.

22 Q And were you able to determine who the saliva
23 belonged to?

24 A I detected the presence of saliva and blood and there
25 was a single DNA profile developed from that stain which

1 matched the DNA profile of [Victim] Hepburn. That profile
2 that I detected could have come from both fluids or
3 predominately from the blood or, you know, the mixture
4 whether it is a ten percent mixture, nine percent mixture,
5 I can't say there was a single DNA profile developed from
6 that stain. And it could have been predominately from the
7 blood or predominately from the saliva, that I don't know.

8 Q And were you able to determine whether the blood and
9 saliva belonged to the same person?

10 A There was only one DNA profile developed is all I can
11 say about that.

12 Q And that is whose DNA profile?

13 A It matched [Victim] Hepburn's DNA profile.

14 Q Now, when we talk about the towel, the white towel
15 here. That contained blood identified as [Victim] what
16 if anything further can be done or may potentially be done
17 to identify contributors?

18 A I am not sure what you are trying to ask me.

19 Q Okay. All right, was there any evidence of any other
20 contributors concerning blood or saliva other than
21 [Victim] ?

22 A No, there was not.

23 Q And in a situation where you don't know where the
24 item has come from such as a towel that may come from a
25 bathroom or a bedroom. In a situation like that what

1 decisions are made about further analysis?

2 A Well, what we attempt to do, the request was to
3 identify biological material and typically that would be
4 blood, saliva, semen, hair, tissue and that is what we
5 attempt to do. There are, due to the sensitivity of DNA
6 there is what has developed now, it has a phrase called
7 touch DNA where there are serological tests to see if some
8 skin cells may be transferred over. But you attempt to
9 get a DNA profile just from somebody handling an object
10 and you are hoping that enough skin cells have transferred
11 over that you can recover the DNA and develop a DNA
12 profile from it.

13 Q And do you, would you necessarily find touch DNA any
14 time someone has had access to an item?

15 A No, that is a very hit or miss. Just because of how
16 briefly someone may have handled an item, how much skin
17 cells may have transferred to that item. We get that
18 request a lot especially if someone abandons an item, they
19 have been wearing a hat or something or a scarf and they
20 abandon it. We get a request to see, to determine
21 ownership, to see if some, if you can detect somebody's
22 profile just due to the skin cells having transferred. It
23 is probably more successful if it is an item of clothing
24 that someone has worn for a while so it has the chance to
25 accumulate more skin cells. But something that someone

1 has briefly handled the odds are certainly less that we
2 would be successful in getting a DNA profile from it.

3 Q And from the standpoint of DNA science, how if at all
4 the problematic is an item such as a towel is previously
5 been in an area such as a bathroom?

6 A Well, it is problematic because of lots of other
7 people could have had access to that towel. They could
8 have handled the towel as well, just washing your hands.
9 So you can end up with mixtures of DNA profiles when you
10 are attempting to get these transfer or touch DNA
11 profiles. Items like a hand towel that has been sitting
12 in a bathroom. You could pick up multiple contributors.

13 Q And would there be any way to determine who would
14 have been the last contributor prior to an analysis?

15 A No, there wouldn't have been.

16 Q So, if I understand correctly it is pickup of a
17 contributor from two weeks previously, is that correct?

18 A If it hadn't been washed, yes it could have.

19 Q Now, I am going to show you what is State's exhibit
20 55 in evidence. And this photograph, can you tell us
21 whether or not the item that was sent for analysis is
22 pictured in that particular photograph?

23 A It appears to be the same.

24 Q Does that appear to be the same item that was
25 submitted for analysis?

1 A I never saw the entire, that particular time. I only
2 received the cuttings.

3 Q All right. And as to this particular item, item 57.
4 And State's exhibit 43.

5 A Yes. These appear to be the bumper, the bumper pads
6 out of the crib.

7 MS. MAYES: And we have one photograph for evidence,
8 Your Honor.

9 THE COURT: And that would be 62?

10 COURT REPORTER: Yes, sir.

11 MR. ABLE: No objection.

12 MR. WISE: No objection.

13 THE COURT: 62 is in evidence without objection.
14 (Whereupon, State's Exhibit 62 was admitted into
15 evidence.)

16 Q Looking here at the items removed from the crib,
17 Agent Fitts, concerning the crib bumper and the reverse
18 crib bumper. Can you tell us whether or not analysis was
19 conducted on these items?

20 A I received cuttings from an item that was labeled one
21 pink crib bumper.

22 Q One pink crib bumper?

23 A That's correct.

24 Q And what if anything was determined from the cuttings
25 that were made from the bumper pad and submitted for DNA

1 analysis?

2 A I received three cuttings from that bumper. On two
3 of those blood was indicated. On a third I ran a test for
4 the presence of saliva which was negative, so no saliva
5 was indicated on one of those cuttings. On two of those
6 cuttings blood was indicated, the presence of blood is
7 indicated.

8 Q So there was blood on how many of the cuttings from
9 the padded pink bumper?

10 A Two of the three.

11 Q Blood on two and as for saliva?

12 A Saliva was only tested on that third cutting and it
13 was negative.

14 Q What if anything was determined about the presence on
15 blood on the two cuttings from the bumper?

16 A Once blood was indicated, again attempted to get a
17 DNA, extract DNA from those samples and develop a DNA
18 profile.

19 Q Were you able to determine a DNA profile?

20 A Yes, I was.

21 Q And whose blood did that ultimately determine to be
22 from the pink bumper?

23 A From one of the cuttings the DNA profile also matched
24 Victim Hepburn. The other cutting, there was an
25 indication of a mixture. The major contributor to that

1 profile was also, also matched the DNA profile of Audrina
2 Hepburn. The minor contributor in that mixture was
3 insufficient for comparison purposes.

4 Q So, Audrina's blood was determined to be in two
5 locations on the crib bumper, is that correct?

6 A That is correct.

7 Q And when you make the determination that it is in
8 fact Audrina's blood what is the level, I suppose I should
9 ask what is the degree of match. What is the statistical
10 calculation for making that DNA match?

11 A For a random individual, an individual selected at
12 random from the population we would expect to find that
13 DNA profile once in every 73 quintillion times.

14 Q One in 73 quintillion?

15 A That is correct.

16 Q Now, when we talk about the other part of the sample
17 from the second cutting which was a match to **Victim** and
18 the second was insufficient for DNA analysis, what do you
19 mean by that?

20 A When we develop a DNA profile, as I mentioned earlier
21 half of it comes from your mom and half of it comes from
22 your dad. So, you inherit what we refer to as two
23 alleles. And so those two alleles we develop the DNA
24 profile. So, if we look at a site and there is actually
25 three alleles present that is indicating to us that there

1 is another contributor to this profile. There is another
2 small amount of DNA from somebody else. And there was
3 only two sites that we looked at that showed evidence of a
4 minor contributor because there was a third allele
5 present.

6 Q Now, when we talk about blood from the white towel
7 that you testified previously was positive for Victim in
8 two locations. You indicated that that blood was also
9 mixed with saliva, is that correct?

10 A Yes. The cuttings tested positive for both.

11 Q If someone is bleeding from the mouth can you tell us
12 whether or not you may expect to find a sample of blood
13 and saliva?

14 A Yes, I would expect that.

15 MS. MAYES: I beg the Court's indulgence.

16 THE COURT: Yes, ma'am.

17 MS. MAYES: Nothing further.

18 THE COURT: Mr. Able.

19 MR. ABLE: No questions.

20 THE COURT: Mr. Wise.

21 CROSS-EXAMINATION

22 By Mr. Wise:

23 Q Do you know how long the stain had been there?

24 A No.

25 Q Thank you.

1 THE COURT: Mr. Fitts, thank you for coming, you are
2 free to go. No objection to excusing Mr. Fitts from
3 subpoena?

4 MR. ABLE: No, sir.

5 MR. WISE: No objection.

6 THE COURT: Ms. Mayes.

7 MS. MAYES: Yes sir, may we approach?

8 THE COURT: Yes.

9 (Whereupon, a bench conference was held in the
10 presence of the jury but out of the hearing of the
11 jury.)

12 THE COURT: Ladies and gentlemen, I have consulted
13 with the attorneys and we are going to go ahead and break
14 for the weekend in this case. I would ask you to be back
15 Monday morning at 9:30. Over the weekend, obviously do
16 not read, listen to or observe any news reports about this
17 case. Of course you are to conduct no independent
18 investigation about any of the facts or circumstances
19 concerning this case. And of course you also can't talk
20 to anybody about this case be that friends, family members
21 or what have you. I am hopeful for having been cooped up
22 here for about at least four days you are going to take an
23 opportunity to get outside and enjoy the weather and not
24 talk about this case by being outside and doing something
25 recreational. So, I hope you all have a very pleasant

1 weekend, a very enjoyable time and we will resume with the
2 State's case Monday morning at 9:30 and I will see you
3 then. Have a great weekend.

4 (Whereupon, the jury was excused from open court for
5 the day.)

6 THE COURT: The jury is out. Before we break and I
7 will say this real quick because I know we are all very
8 tired. I have been extremely impressed with the way that
9 the respective families on both sides of this issue have
10 conducted yourselves this week. I want to congratulate
11 you, I know that this testimony has been difficult at
12 times for everyone concerned. I want to thank you for not
13 putting me in a bad position of having to do something bad
14 to one side or the other, one individual or another. I
15 hope that you all have a great weekend. When I come in
16 Monday I don't want to here there was any problems with
17 harassment or people going around other people. The same
18 thing I said to the jury applies to y'all. Enjoy the
19 weekend, stay away from anybody you have a problem with
20 and I will see you all on Monday.

21 MR. ABLE: Judge, we do need to mark these statements
22 as Court's exhibits.

23 THE COURT: I think you can agree to that so we will
24 go ahead and do that. We are off the record and will
25 resume Monday morning at 9:30.

1 (Whereupon, the trial will resume on Monday at 9:30
2 a.m.)

3 THE COURT: Good morning. Ms. Mayes, you had
4 informed me that you may or may not have additional
5 witnesses. Do you anticipate calling some additional
6 witnesses?

7 MS. MAYES: Yes, Your Honor, we probably have two or
8 three additional witnesses.

9 THE COURT: Bring the jury out, please.
10 (Whereupon, the jury came into open court at
11 approximately 9:45 a.m.)

12 THE COURT: The record should reflect that the jury
13 is back. Ladies and gentlemen of the jury, I hope that
14 you had a pleasant weekend. We are still in the State's
15 case-in-chief. We will resume the trial this morning.
16 Ms. Mayes, call your next witness, please.

17 MS. MAYES: The State calls Officer Garrison.
18 Joshua Garrison, after being duly sworn,
19 testified as follows:

20 DIRECT EXAMINATION

21 By Ms. Mayes:

22 Q Officer Garrison, how did you become involved in this
23 case?

24 A I was advised by central dispatch that there was a
25 possible child abuse at Greenwood Memorial Hospital.

1 Q And to clarify, you are employed where?

2 A Laurens County Sheriffs Office.

3 Q And upon receiving that report where did you go?

4 A Greenwood, South Carolina Self Memorial Hospital.

5 Q And this would be in the early morning hours of
6 October 13th?

7 A That is correct, at approximately 1:00 o'clock.

8 Q Do you have with you any notes or documentation
9 concerning your response to that incident location at
10 Greenwood?

11 A I do. I have an incident report that I wrote.

12 Q And whose signature is on the incident report?

13 A Mine.

14 Q Tell us what happened once you arrived at Self
15 Regional Hospital in Greenwood?

16 A I spoke with the victim's mother, Ashley Hepburn
17 stated that she put the child in the crib to go to sleep
18 at approximately 10:30 p.m. on 10/12/2009.

19 Q All right. So, the information was that she had put
20 the child in the crib at 10:30?

21 A That's correct.

22 Q Did Ms. Hepburn report anything else to you
23 concerning her daughter, Victim ?

24 A Said she was a little fussy due to the fact that she
25 had been teething.

1 Q What about her overall condition?

2 A She was okay.

3 Q And what else did she, let me just ask you this. Did
4 you have the opportunity to speak to Mr. Lewis?

5 A I did.

6 Q Where did you speak to him?

7 A In a room at Self Memorial Hospital.

8 Q And was he with Ashley Hepburn when you spoke with
9 him or was he on his own?

10 A He was on his own.

11 Q What, if anything, did Mr. Lewis report to you about
12 the events of that night?

13 A He stated that at approximately 1:30 in the morning
14 he checked on the victim to see if she was okay. He
15 stated that he saw the child to be unresponsive laying in
16 the corner of the crib face down. At that point he picked
17 the child up and she was unresponsive. At that point he
18 went and got the child's mother and called 911.

19 Q Did he state anything else that was at 1:30 a.m. that
20 he reported when finding her?

21 A Ma'am, I am sorry, can you repeat that.

22 Q According to your report that was 1:30 a.m. that he
23 reported finding her?

24 A That is correct.

25 Q What, if anything, did he report about checking on

1 her at previous occasions during the night?

2 A He stated the child was okay at approximately 11:30
3 p.m. on the 12th day of October.

4 Q So she was okay at around 11:30?

5 A That is correct, 11:30 p.m.

6 Q Did you question Mr. Lewis as to his frequency at the
7 location?

8 A I did.

9 Q What did he report to you?

10 A He states that he resides in Clinton but he stays at
11 the incident location two or three times a week.

12 Q So, when he reported that he stays at the incident
13 location two to three times a week, that information came
14 from who?

15 A Mr. Lewis.

16 Q Nothing further.

17 CROSS-EXAMINATION

18 By Mr. Able:

19 Q Officer Garrison, when you spoke to Ms. Hepburn you
20 said that she told you that she put the child in the bed
21 at approximately 10:30 on October 12th of 2009?

22 A That is correct.

23 Q And that child had been a little fussy that day
24 because she was teething?

25 A That is what she told me.

1 Q And overall the child was okay when she put her to
2 bed?

3 A Correct.

4 Q Did Ms. Hepburn tell you that after she put the child
5 down in the crib she went to bed and fell asleep?

6 A That's correct.

7 Q And that she was later awakened by Mr. Lewis who was
8 holding the child and the child was unresponsive?

9 A Correct.

10 Q Mr. Lewis reported the child was okay as late as
11 11:30 p.m. on the 12th?

12 A That is correct.

13 Q That is all I have.

14 CROSS-EXAMINATION

15 By Mr. Wise:

16 Q Mr. Garrison, what time did you get there, you got to
17 Greenwood, at about what time?

18 A If memory serves me correct, it was early morning
19 hours, I am not one-hundred percent sure of the exact
20 time.

21 Q And you ran across Mr. Lewis and Ms. Hepburn where?

22 A I spoke to Mr. Lewis in some room in the hospital, I
23 don't recall exactly where it was at but it was at Self
24 Memorial Hospital.

25 Q At that point did you know what was wrong with the

1 child?

2 A Correct.

3 Q Did you know what was wrong with the child?

4 A I knew that she had had severe head injuries and I
5 hadn't spoke to or seen the child or anything.

6 Q So all you knew was the child had a head injury?

7 A Right.

8 Q You didn't know anything about what caused it or
9 anything?

10 A Possible child abuse is all that I knew.

11 Q Let me borrow, do you have your notes with you?

12 A This is the incident report.

13 Q You don't have the handwritten notes from that?

14 A No.

15 Q You didn't record any of this conversation?

16 A I am sorry?

17 Q You didn't record this conversation or anything?

18 A No.

19 Q And Mr. Lewis answered any questions you asked?

20 A He did.

21 Q Apparently wasn't very long?

22 A It was not a long interview.

23 Q You didn't sit him down and talk to him for an hour
24 or hour and a half?

25 A Not that I recall.

1 Q But he was cooperative with you and answered the few
2 questions you had?

3 A He was.

4 Q Thank you.

5 MS. MAYES: Nothing further, Your Honor.

6 THE COURT: Thank you for coming. You are free to
7 go.

8 MS. MAYES: May we approach?

9 THE COURT: Please.

10 (Whereupon, a bench conference was held in the
11 presence of the jury but out of the hearing of the
12 jury.)

13 MS. MAYES: The State calls Robert Plaxico.

14 Robert Plaxico, after being duly sworn,
15 testified as follows:

16 DIRECT EXAMINATION

17 By Ms. Mayes:

18 Q Lieutenant Plaxico, would you give us some
19 information about yourself?

20 A Yes, ma'am. I work at the criminal investigations
21 division at the sheriffs department and have been doing
22 that for the last eight years and have been working at the
23 Laurens County Sheriffs Department for 18 years.

24 Q All right. Now, I want to ask you how you became
25 involved in the investigation concerning the severe

1 injuries to [Victim] Hepburn and subsequently the death of
2 [Victim] Hepburn?

3 A I was the investigator on call the week that
4 happened.

5 Q And what does that mean when you say you were the
6 investigator on call?

7 A Each investigator at the sheriffs department has to
8 take a week of call and I was on call that week which made
9 me the lead investigator at the sheriffs department on the
10 case.

11 Q And what was your first response or first reaction to
12 getting the assignment as the lead investigator?

13 A I was already out on a call and I received a call to
14 go to Self Memorial Hospital in Greenwood in reference to
15 injuries to a baby.

16 Q And when you arrived at the Greenwood Hospital at
17 Self who did you initially have contact with in reference
18 to this investigation?

19 A Dr. Curry.

20 Q Did you have an opportunity to speak with Dr. Curry
21 concerning [Victim]'s condition?

22 A I did.

23 Q What happened next?

24 A She just informed myself and Lieutenant Ben Blackmon,
25 who was the investigator with me, that it was real serious

1 injuries and that they were transferring the child to
2 Greenville.

3 Q And what, if anything, did you do in order to make
4 initial contact with Victim caregivers on the night in
5 question?

6 A We spoke with Ms. Ashley Hepburn that night and also
7 spoke with Richard Brandon Lewis that night.

8 Q And where was your initial contact with Ashley
9 Hepburn?

10 A She was inside the Self Hospital there and we walked
11 outside and talked just a little bit.

12 Q That would be, when you say outside you are referring
13 to what area?

14 A We walked out to the parking lot.

15 Q At that point did Ms. Hepburn have anything of
16 significance?

17 A No, ma'am.

18 Q And when did you have contact with Mr. Lewis?

19 A When we went in we talked to Mr. Lewis there inside the
20 hospital.

21 Q And how did it come about that Mr. Lewis have to come
22 down to the station referred previously from some
23 investigators who spoke with him at the police station.
24 How did that come about?

25 A We knew that Victim was going to be transferred to.

1 Greenville so we allowed Ashley to go to Greenville and we
2 asked Mr. Lewis if he would come to the sheriffs
3 department with us to talk some more.

4 Q When [Victim] was transferred to Greenville Hospital,
5 to the pediatric intensive care unit what follow-up did
6 you do at that point?

7 A Later on that day we or I went to Greenville Memorial
8 Hospital and checked on [Victim] and then talked to Ashley
9 and asked her to come down that afternoon for some
10 interviews.

11 Q And when you say you asked her to come down you are
12 referring to what?

13 A To the Laurens County Sheriffs Office.

14 Q All right. And we have heard testimony about Ms.
15 Hepburn being interviewed at the Laurens County Sheriffs
16 Department. Can you tell us whether or not that was in
17 response to your request?

18 A It was.

19 Q What, if anything, after those series of interviews
20 was done by yourself in order to follow-up with additional
21 information in this case?

22 A The following day I went to Mr. Lewis' grandmother's
23 house in Clinton on Cedar Street to attempt to talk to Mr.
24 Lewis again.

25 Q And to your knowledge where was he residing at the

1 time?

2 A It was on Cedar Street and he was living with his
3 grandmother.

4 Q What happened upon your arrival at his grandmother's
5 residence?

6 A I knocked on the door and was greeted and went in and
7 I asked was Brandon there. And his mother was also
8 present and she went upstairs to get him and then I heard
9 somebody running downing the steps and his mother hollered
10 Brandon's name and they said Brandon had ran out the door.

11 Q And how ultimately was he located?

12 A His mother went and got him and she brought him back
13 into the house and stated that he thought that I had come
14 to arrest him. And we just talked and I didn't gain
15 anything further from him so I left.

16 Q Nothing further.

17 CROSS-EXAMINATION

18 By Mr. Able:

19 Q Mr. Plaxico, this incident concerning Mr. Lewis and
20 what had happened on September the 14th of 2009?

21 A Yes sir, the next day.

22 Q The day after you had got involved in this case?

23 A Yes, sir.

24 Q And you were gone to Mr. Lewis' grandmother's house
25 to speak to him and he tried to run away?

1 A Correct.

2 Q That is all I have.

3 CROSS-EXAMINATION

4 By Mr. Wise:

5 Q His mother went and got him and brought him back?

6 A Yes, sir.

7 Q You talked to him?

8 A I did.

9 Q He answered any question you wanted?

10 A He did.

11 Q Did he tell you anything different from what he told
12 you about 11:00 o'clock the previous day?

13 A No, sir.

14 Q In fact you were present at a DSS hearing in this
15 case, weren't you?

16 A Yes, sir.

17 Q I believe that was held on May 18th of 2010?

18 A Correct.

19 Q And representing DSS in that hearing was Laura Houck?

20 A Yes, sir.

21 Q I believe I was there?

22 A Yes, sir.

23 Q I got to ask you a few questions?

24 A Yes, sir.

25 Q And Ms. Houck called Brandon Lewis as a witness on

1 behalf of the Department of Social Services?

2 A Yes, sir.

3 Q And he testified at that hearing?

4 A Yes, sir.

5 Q And he testified at that hearing pretty much as he
6 told you at the 11:55 interview on the day of this
7 incident?

8 A I don't know what he testified to, I wasn't in the
9 courtroom.

10 Q You left before his testimony was through?

11 A Yes, sir.

12 Q And outside this one incident has Brandon been
13 available to talk to you whenever you wanted to talk to
14 him?

15 A Yes, sir.

16 Q You didn't sign a warrant on Mr. Lewis?

17 A No, sir.

18 Q You are the chief investigator in this case?

19 A Correct.

20 Q And you have never signed a warrant on Mr. Lewis?

21 A No, sir.

22 Q Thank you.

23 REDIRECT EXAMINATION

24 By Ms. Mayes:

25 Q What other investigating agencies were involved in

1 this case?

2 A State Law Enforcement Division.

3 Q And why is that?

4 A When a child under a certain age dies you have to
5 notify the child fatality division at the State Law
6 Enforcement Division and they assign agents to that case
7 also.

8 Q And how did SLED become involved in this
9 investigation, at whose request?

10 A At the Laurens County Sheriffs Department.

11 Q And can you tell us whether or not they also have
12 authority to make arrests?

13 A They do.

14 Q And ultimately what arresting agency was involved in
15 the arrest of Brandon Lewis?

16 A State Law Enforcement Division.

17 Q SLED?

18 A Yes, ma'am.

19 Q Nothing further.

20 MR. ABLE: Nothing, Judge.

21 RECROSS-EXAMINATION

22 By Mr. Wise:

23 Q And that was in September of 2009 that Mr. Lewis was
24 arrested?

25 A I am not really sure.

1 Q Many, many months after this incident?

2 A It was.

3 Q Thank you.

4 MS. MAYES: May we approach, Your Honor?

5 THE COURT: Sure.

6 (Whereupon, a bench conference was held in the
7 presence of the jury but out of the hearing of the
8 jury.)

9 THE COURT: Ladies and gentlemen, we will take a
10 brief break at this time. The next witness will be here
11 in just a few minutes. Relax in the jury room and don't
12 discuss the case.

13 (Whereupon, the jury was excused from open court for
14 a break.)

15 THE COURT: The record should reflect for the last
16 witness, Lieutenant Plaxico testified and Mr. Wise
17 approached the bench and informed me that he had a motion
18 that he needed to put on the record. And all concerned
19 were okay and it related to the last witness who had
20 testified, all attorneys involved agreed that Mr. Wise
21 could put this matter on the record after the witness had
22 testified.

23 MR. WISE: And keeping with the Court's prior ruling
24 I was going to assume that you were going to prohibit me
25 from going into the statements that Ms. Hepburn made after

1 Ms. Hepburn was shown my client's confession and that
2 would be an area of cross-examination. I think I am
3 legally entitled to go into and I would have gone into
4 that if the Court had been gracious enough to permit me to
5 do it. I am assuming that the Court truly was going to
6 continue and therefore I did not ask those questions.

7 THE COURT: The Court's ruling would have been the
8 same as we discussed previously. And I anticipated that
9 is what you were going to address at that point and time.

10 MR. WISE: Okay.

11 THE COURT: Your next witness, you told me a moment
12 ago he is about twenty minutes out.

13 MS. MAYES: Yes sir, Your Honor.

14 MR. ABLE: Judge, just as a matter of housekeeping.
15 When we ended Friday there were three statements that had
16 been prepared, one for Mr. Calvin Hill, one for Dee Deal
17 and one for the SLED agent, Ms. Kirkland that everybody
18 agreed to marking as Court exhibits. I think they were
19 Court exhibits 5, 6 and 7. When I made copies and laid
20 them on the rail everybody had already gone, they were
21 there this morning and I provided them to the Court
22 Reporter so I believe they have been marked. I want to
23 make sure that is everybody's agreement.

24 THE COURT: Without objection, Court's 5, 6 and 7
25 will be received for purposes of the record, not for

1 introduction for the jury to review.

2 (Whereupon, Court's Exhibits 5, 6 and 7 were marked
3 for identification only.)

4 THE COURT: If could, just so the record is complete.

5 Ms. Mayes, could we make the redacted version of the
6 incident report that Lieutenant Plaxico testified to as
7 well as a clean copy, clean copy of that for the record so
8 that appellate authority is aware of what was redacted and
9 what the Lieutenant may have testified to had the Court
10 permitted him to do so, what Mr. Wise sought to elicit
11 from that witness had the Court permitted him to do so.

12 MR. WISE: I think that is in the record on the
13 pretrial motions and everything else too. Remember, we
14 had the Jackson v. Denno hearing and it was all testified
15 to at that hearing and that is when we made the third
16 party guilt argument and everything.

17 THE COURT: You are satisfied that the record
18 reflects and is okay.

19 MR. WISE: I am satisfied that the record reflects
20 what he would have said had I been permitted to
21 cross-examine.

22 THE COURT: All right. Very good, I guess it won't
23 be necessary to create Court's 8.

24 MS. MAYES: If we can approach for classification on
25 something.

1 THE COURT: Okay.

2 (Whereupon, a bench conference was held.)

3 THE COURT: We will be at ease and let us know when
4 the agent is here.

5 (Whereupon, a short break was taken.)

6 THE COURT: Let's have the jury back in.

7 (Whereupon, the jury came into open court at
8 approximately 10:40 a.m.)

9 THE COURT: Let the record reflect that all the
10 jurors are present. Ms. Mayes, call your next witness.

11 MS. MAYES: The State calls Matt Fitts.

12 THE COURT: Mr. Fitts, you were called as a witness
13 on Friday and you are still under oath. Have a seat and
14 consider yourself still being under oath.

15 DIRECT EXAMINATION

16 By Ms. Mayes:

17 Q Agent Fitts, I believe you testified Friday
18 concerning DNA evidence, correct?

19 A Yes, I did.

20 Q And how long have you been a DNA analyst at SLED?

21 A About 14 years.

22 Q Now, to clarify your testimony on Friday concerning
23 what you term item 5.2 as a mixture. What is item 5.2?

24 A It was a cutting from the bumper pad.

25 Q And we are talking about the bumper pad area of the

1 crib?

2 A That's correct.

3 Q Now, what do you mean by the term, mixture?

4 A There is evidence that an additional profile other
5 than the major contributor as I testified to which matched
6 **Victim** Hepburn. There was evidence of some other DNA
7 present in that extraction. And I had mentioned last
8 Friday where you get half of your DNA from your mom and
9 half from your dad. You get two what are called, what are
10 called two alleles. So, when you are looking at these
11 genetic sites if more than two alleles show up there is
12 evidence of a mixture of another individual's profile is
13 present.

14 Q And you mentioned that the major contributor, that is
15 scientific terms. But what are you talking about when you
16 say that?

17 A This testing is semiquantitative. So, if you have a
18 mixture of two individuals, if ninety-nine percent of that
19 mixture is one individual there being a profile is going
20 to show up with a lot stronger signal than someone that is
21 a one percent of that mixture. If you had a fifty/fifty
22 mixtures, two individuals, it would be pretty even. But
23 in this particular case the evidence of the other
24 individual is that it is a very low, low amount of DNA
25 present. So the major contributor is the one that is

1 probably about ninety-nine percent of that stain.

2 Q And what is the stain, what was it determined to be?

3 A There was blood identified from that cutting.

4 Q So [Victim] blood is found on the cutting, now what
5 did you mean when you said that the other profile is
6 insufficient for analysis.

7 A When we develop a DNA profile we actually try to
8 develop a profile from sixteen different sites on your DNA
9 and in this particular case it is insufficient because
10 only two out of sixteen sites showed evidence of another
11 individual being present.

12 Q And what does that mean in scientific terms in
13 relation to any value it might have forensically?

14 A It doesn't add much value at all. The concentration
15 is so low, we have so little information to go by, we run
16 the risk of falsely including or falsely excluding an
17 individual by analyzing something with so little
18 information to it.

19 Q Now, can you tell us whether or not, pursuant to your
20 job as a forensic analyst, you also obtain factual
21 information about a case?

22 A Yes.

23 Q In a case such as this where both the mother and the
24 additional subject, a boyfriend acknowledged having
25 contact with the crib, not only on this occasion but

1 impliedly on other occasions as well. What value might
2 additional DNA have?

3 A Very little if individuals, if individuals have
4 access to the area of the crime scene, if they have
5 legitimate access to it it wouldn't be unusual to find
6 their DNA profiles in an area that they normally have
7 access to, you know, day by day.

8 Q So, when you mentioned that there was a mixture with
9 Audrina's blood is there any way to know scientifically
10 when that other small amount of someone's DNA would have
11 been left behind on the pink bumper?

12 A No, there isn't.

13 Q Could it have been the day before?

14 A Yes.

15 Q Could it have been a month before?

16 A Yes.

17 Q Now, I believe you mentioned also in relation to the
18 white towel, what if any DNA profile was recovered from
19 the white towel?

20 A The DNA profile developed from the towel also matched
21 Victim Hepburn.

22 Q And that was in what form, what type?

23 A There was blood and saliva indicated in those stains.

24 Q In addition to Victim blood and saliva being found
25 on a towel was any other DNA profile recovered?

1 A No.

2 Q Would it be possible to know who the last person to
3 touch the towel was?

4 A No, that would be a stretch.

5 Q And in a situation where a towel may have had
6 previous contact with other people, is there any way to
7 determine when someone may have left DNA behind?

8 A No, it is not.

9 Q And finally what was the only known DNA profile or
10 known DNA profiles to be recovered in this particular
11 case?

12 A Those of Victim Hepburn.

13 Q And that was in the form of her blood and saliva?

14 A Correct.

15 Q Nothing further.

16 THE COURT: Mr. Able.

17 CROSS-EXAMINATION

18 By Mr. Able:

19 Q Mr. Fitts, what I understand you are saying is you
20 would expect the mother's DNA to be present in that
21 child's bed?

22 A I would expect that, yes.

23 Q And you would expect it to be on the bumper pad?

24 A Certainly have the chance to, yes.

25 Q And that would not be something that you consider

1 unusual for a mother's DNA to be in a baby's crib?

2 A No, I would not.

3 Q Because she has--

4 A Access to it.

5 Q Access to it, she has constant contact with
6 everything in it?

7 A That is correct.

8 Q That is all I have.

9 MR. WISE: No questions.

10 REDIRECT EXAMINATION

11 By Ms. Mayes:

12 Q And ultimately do you have any way of knowing whose
13 DNA other than Victim may have been recovered from the
14 crib?

15 A No, I don't.

16 Q Nothing further.

17 THE COURT: Mr. Able?

18 MR. ABLE: No questions.

19 THE COURT: You can step down. Thank you.

20 MS. MAYES: The State rests, Your Honor.

21 THE COURT: Ladies and gentlemen of the jury, we have
22 reached that portion of the trial where it is necessary
23 for me to take up certain motions and matters of law that
24 do not concern you. We will take a brief break and don't
25 talk about the case. Thank you.

1 (Whereupon, the jury was excused from open court for
2 a break.)

3 THE COURT: The record should reflect that the jury
4 is out. Mr. Able, motions?

5 MR. ABLE: Yes, sir. Your Honor, at this time we
6 would move for a directed verdict under Rule 19. Of
7 course my client is charged with two crimes. The first
8 being homicide by child abuse. The elements of that crime
9 are causing the death, number one, causing the death;
10 number two, of a child under the age of eleven; number
11 three, while committing child abuse or neglect; number
12 four, circumstances showing extreme indifference to human
13 life. She is also charged with the crime of aiding and
14 abetting homicide by child abuse which has five different
15 elements. Number one, knowingly; number two, aiding and
16 abetting another person; number three, to commit abuse or
17 neglect; number four, of a child under the age of eleven;
18 and number five, the abuse or neglect results in the death
19 of the child. Now, of course Judge, in a directed verdict
20 motion the Court is concerned with the existence or
21 nonexistence of evidence and not the weight of that
22 evidence. I think it is important in this case that I
23 outlined for the Court the evidence that has been produced
24 by the State in their case-in-chief and of course, number
25 one, we had, the first witness was Ms. Thompson, the 911

1 operator. She really offered very little except the fact
2 that she took the 911 call and identified the recording as
3 the 911 recording. Mr. Calvin Duckett, the EMS driver, he
4 of course described arriving on the scene that night, the
5 call he received; the condition of Victim He didn't add
6 anything to the State's case that would indicate my
7 client's involvement and the injuries to the child. The
8 next witness was Dr. Michelle Curry from Self Regional.
9 Of course she described the condition of the child, the
10 injuries to the child, she related Mr. Lewis' statement
11 that he was awake, he was the one who was awake in the
12 house and Mr. Lewis' statement that Ms. Hepburn was
13 asleep. She also related to the Court or to the jury Ms.
14 Hepburn's statement that she had put the child to sleep
15 around 10:30 and was awakened by Mr. Lewis holding the
16 child later that evening. The State also called Mr. David,
17 Crumley who testified that the child was fine earlier in
18 the evening of October 12th of 2009 before he went to bed
19 and that he had been awoken by Ms. Hepburn screaming for
20 help. The State next called Doris Davis, my client's
21 mother who like Mr. Crumley testified that Victim had
22 been fine earlier in the evening. They had eaten dinner,
23 watched television, she had picked the child up and taken
24 the child to the mother to get a bath and that the child
25 had no injuries up to her going to bed earlier that

1 evening. And that she was later awakened to Ms. Hepburn
2 screaming for help. The State called Alexander Brown.
3 Mr. Brown related that he was the clergyman over at Self
4 Memorial Hospital, he related Mr. Lewis' statement that he
5 was the only person awake in the house. He related Mr.
6 Lewis' statement that Ms. Hepburn and all the others in
7 the house were asleep and related and testified to Mr.
8 Lewis' statement that the child not liking him but that he
9 loved the child and that Mr. Lewis never said anything
10 about Ms. Hepburn doing anything except being in bed. Had
11 Dr. Seigler from Greenville Memorial Hospital. He
12 testified as to Victim [REDACTED], that Victim [REDACTED] suffered abusive
13 head injury, head trauma, excuse me. He described her
14 injuries, he testified that the head injuries were not old
15 and he testified that the bruises may or may not have
16 occurred at the same time. The State called Dr. Croswell
17 who testified that Ashley reported that, I am sorry, that
18 Ms. Hepburn reported the history to her at Greenville and
19 the history that she reported that Mr. Lewis was awake and
20 found Victim [REDACTED]. That she was asleep in the bed and Dr.
21 Croswell described the child's condition and her injuries.
22 Dr. Johnson, I think it was Dr. Johnson, the pediatric
23 ophthalmologist, his testimony was brief. He described
24 the injuries to the child and the retinal hemorrhages of
25 the child. Dr. Philpott was called next who testified,

1 she was the doctor from the Children's Center over in
2 Greenwood. She described the rash, she described that the
3 mother had taken the child to the doctor on three
4 occasions, September the 11th, September 12 and September
5 16th. She said that she made no diagnosis of child abuse
6 but that was a differential diagnosis and that if she had
7 any belief that it had been child abuse that of course she
8 would have reported the same to the authorities as she is
9 statutorily mandated to do. The State called Ms. Rita
10 Ebel. Ms. Ebel described the chipped tooth and the bruise
11 to [Victim] 's forehead. The State also called Daniel
12 Hepburn who spoke about the rash and his discussions with
13 Ms. Hepburn. The fact that Ms. Hepburn had asked him to
14 take the child to the doctor for the test in Greenwood and
15 also that the fact that she had told him that she had
16 taken the child to the doctor for the rash. Dr. Ward
17 testified, the pathologist. He testified of course to the
18 cause of death being head injuries and homicide was his
19 conclusion. The State called Ben Blackmon who took the
20 first statement from Mr. Lewis. The testimony of Mr.
21 Blackmon was that Mr. Lewis informed him that he was the
22 only one up in the home that night and that Ashley was
23 asleep. Justin Moody was the next witness who testified
24 that he had taken a second statement from Mr. Lewis and
25 that Mr. Moody testified that Mr. Lewis informed him that

1 he was up and that Ashley was asleep. Melissa Wallace
2 from SLED testified, she had testified concerning the
3 diagram and the photos of the house and the items she
4 collected pursuant to the search warrant. Dee Deal from
5 the Department of Social Services testified that Mr.
6 Hepburn's statements to him or, I am sorry, Mr. Lewis'
7 statements, I am sorry, I am sorry. It was Ms. Hepburn's
8 statements that she had gone to bed and was awoken by Mr.
9 Lewis with the baby and he also heard the statements from
10 Mr. Lewis that he was the only one up in the home and that
11 Ashley was asleep. And also the statement that he had
12 overheard that Mr. Lewis say that, said that the baby
13 didn't like him and that he loved her. Calvin Hill of DSS
14 also testified to his statement from Ashley. Ms. Hepburn,
15 that she was asleep and Mr. Lewis was the only one up at
16 that night. Raymond Franklin testified that he had given
17 Ashley her Miranda, Ms. Hepburn her Miranda warnings, that
18 was basically the substance of his testimony. Ms.
19 Kirkland from SLED testified that Ashley's statement was
20 that she was asleep and Mr. Lewis was the only one awake.
21 And that there was nothing directly tying her to any
22 abuse of the child. The SLED analysis persons, Jan
23 Bryson, Ila Simmons and Matt Fitts who just testified
24 again. Basically their testimony was they received the
25 items, tested them, found Victim Vict blood but there was no

1 testimony provided by them or any information provided
2 that indicated Ms. Hepburn's involvement with the injuries
3 to Victim. This morning you had Officer Garrison
4 testify, nothing to indicate my client's involvement in
5 the injuries to this child. As a matter of fact he too
6 testified that his statements that Ashley Hepburn stated
7 that she had put the child down at about 10:30 that
8 evening and that she had gone to bed and fallen asleep and
9 that she was awakened by Mr. Lewis who was holding the
10 unresponsive child. That he spoke with Brandon Lewis who
11 had said he had found the child basically laying in the
12 corner of the bed. Officer Plaxico, of course, his
13 testimony this morning was as to the flight of Mr. Lewis.
14 And that is the State's case, Judge. That is the
15 substance of their case. In support of the motion for
16 directed verdict I would site the following cases. The
17 State v. Arnold, 361 SC 386; State v. Martin, 340 SC 597;
18 State versus Schrock, 283, SC 129; and State versus
19 Hernandez, 382 SC 620. Now, of course, Judge, you are
20 aware the controlling law in this type motion is that a
21 defendant is entitled to a directed verdict when the State
22 fails to produce evidence of the offense charged. The
23 trial court should grant a directed verdict when the
24 evidence merely raises a suspension that the accused is
25 guilty. The trial court should submit the case to the

1 jury only where there is substantial circumstantial
2 evidence which tends to prove the guilt of the accused or
3 from which the guilt may be or from which his guilt may be
4 fairly and logically produced. Judge, it would be our
5 position that in this case the State has failed to meet
6 any substantial evidence standard. Of course, it is the
7 burden of the State to prove each element of the offenses
8 charged and that the defendant committed that act or
9 committed the act. In this case the State has raised only
10 suspension of Ms. Hepburn's guilt and the only suspension
11 is that she was present in the home. That is the only
12 thing they have proven. They have proven, of course,
13 that, there is no arguing that **Victim** passed as a result
14 of these injuries. But the only thing they have proven
15 concerning Ms. Hepburn is that she was present just like
16 two other persons in that home, her mother and David
17 Crumley and they were the ones asleep. So, the only thing
18 they have shown as concerns my client is that she was
19 present in the home. It is our position that the evidence
20 presented does not point to Ms. Hepburn's, does not point
21 to anything except that Ms. Hepburn was in the home. When
22 you look at the elements of the offenses charged, Judge,
23 as to the homicide by child abuse, number one, you have
24 got the State's burden of proof that there was the death
25 of a child. Well, they have proven that but they haven't

1 proven or haven't shown any evidence that would indicate
2 that my client was responsible for that, not even a
3 suspicion of evidence that she was responsible for that.
4 Number two, they have proven that the child was under the
5 age of eleven. Number three, they have proven that the
6 death of the child, that the death of the child was caused
7 by child abuse however they have not proven the child
8 abuse was inflicted by my client. There is no evidence,
9 none, to indicate that the injuries that caused this
10 child's death were inflicted or caused by my client.
11 Although they have proven the death was child abuse, they
12 haven't shown any evidence that would even raise a
13 suspicion except for the fact that she was there. The
14 only thing that they have shown is that she is there in
15 the home. But the only thing that they have shown so far
16 as to the fact that she was present was that she was
17 asleep, that she had gone to bed and gone to sleep that
18 night. And they haven't provided any evidence that my
19 client showed any extreme indifference to human life in
20 any way.

21 As to the second charge, the aiding and abetting
22 charge. The State has not shown any evidence that Ms.
23 Hepburn acted knowingly to aid or abet any person to abuse
24 Audrina. So, Judge, we would move for a directed verdict
25 pursuant to Rule 19. And it is our position that the

1 State has failed to produce evidence to this point that my
2 client inflicted injuries that caused this child's death.
3 Thank you, sir.

4 THE COURT: Thank you, Mr. Able. Before I turn over
5 to Mr. Wise, Ms. Mayes, what is your response as far as
6 Mr. Able's assertions to the lack of evidence with regard
7 to Ms. Hepburn.

8 MS. MAYES: Yes sir, Your Honor. Pursuant to this
9 particular statute, homicide by child abuse and also
10 aiding and abetting homicide by child abuse. Child abuse
11 is defined by the statute as including neglect. And
12 further the statute child abuse and neglect as an act or
13 omission. And that act or omission includes a number of
14 different things but primarily it can include failure to
15 intervene on behalf of the child, failure to provide
16 proper care and support or benefits to the child's
17 welfare. And in this particular case it rises above the
18 level of Ms. Hepburn simply being present. Yes, Your
19 Honor, this phase where Ms. Hepburn is concerned, it is
20 primarily a circumstantial case however pursuant to case
21 law when considering a motion for directed verdict the
22 Court is concerned with the existence or nonexistence of
23 evidence, not its weight. And even when the State
24 relishes exclusively on circumstantial evidence it may be
25 sufficient for submission to the jury. And that is State

1 versus Mitchell from 2000. In addition, in the case of
2 State versus Cherry, It is the Judge's duty to submit the
3 case to the jury if there is any substantial evidence
4 which reasonably tends to prove the guilt of the accused
5 or from which the guilt may be fairly and logically
6 deduced. Here, Your Honor, it is logical to conclude that
7 Ms. Hepburn was involved and had knowledge of the events
8 if not in fact committing the offenses herself. There has
9 been testimony that her bedroom was approximately six feet
10 or less from the child's bedroom. That has been proven
11 through testimony from people at the crime scene as well
12 as through photographs. And Ms. Hepburn stated herself in
13 her statement to the State Law Enforcement Division that
14 if something had happened to Victim she would know it.
15 And she denied ever hearing Victim cry or make a sound.
16 And, Your Honor, that statement the State submits is
17 circumstantial evidence for the jury to consider because
18 the State's position is that Ms. Hepburn has not been
19 forthcoming in her statements to law enforcement where she
20 denies knowledge of any of the events. There have been a
21 number of inconsistencies in the history provided by both
22 Mr. Lewis and Ms. Hepburn concerning when the child went
23 to bed and the events that occurred throughout the night.
24 When they initially spoke with EMS or with 911, and that
25 has been published to the jury they were both there

1 providing the history to the caller and they state the
2 child was put into bed at 11:30. There are other
3 statements where Ms. Hepburn has stated that the child
4 went to bed at 9:30. There are other statements where she
5 said that it was 10:30. She also admits to getting the
6 child out of the bed at a certain point to give her Orajel
7 and to give her a bottle and then later put her back in
8 the bed. So at, there is no question that she was having
9 interaction with the child throughout the night. Now, she
10 later has reported to going to sleep, that even by her own
11 admission in statements Mr. Lewis came in and woke her up
12 at various points during the night and she acknowledged
13 him waking her up. There were certainly various points
14 during the night when Mr. Lewis, according to his
15 statements, was in another room which would be the
16 living-room out of the line of sight where Ms. Hepburn was
17 which certainly rises above the level of being merely
18 present at the scene. It is certainly logical for the
19 jury to conclude that Ms. Hepburn entered the child's room
20 at any point while Mr. Lewis was in the living-room. Mr.
21 Lewis has denied harming the child in any way and states
22 he found the child unconscious. Certainly that statement
23 is also a question for the jury to consider which will
24 ultimately come down to how they weigh the evidence
25 between these two defendants and the credibility of any

1 statements that they may have made. But the State's
2 position that neither Ms. Hepburn or Mr. Lewis have given
3 a forthcoming statement to law enforcement or acknowledged
4 the full events of that night and therefore it is logical
5 for the jury to conclude that both are involved, both have
6 committed acts and or omissions which caused the death of
7 Victim Hepburn.

8 THE COURT: Mr. Wise.

9 MR. WISE: Your Honor, I would also move for, I have
10 got another third motion which we need to address after
11 this but on this issue I would also move for a directed
12 verdict on the grounds of taking the evidence in the light
13 most favorable to the State. There is no substantial
14 circumstantial evidence indicating Mr. Lewis in this. Mr.
15 Lewis has denied any involvement all along. It is, the
16 only thing you can say he was merely present. The Court
17 will charge the jury that mere presence isn't sufficient
18 to convict. The State's theory is that Ms. Hepburn could
19 have, according to their argument, that Ms. Hepburn easily
20 could have entered the room of Victim while Mr. Lewis was
21 watching television and he not know anything about it. We
22 concur in that argument as to a logical way of looking at
23 it. I would also point out to the Court that to some
24 extent you do not just look at the existence of evidence.
25 You actually, on a circumstantial evidence case such as

1 this, you actually engage in a little weighing contest so
2 to speak because the standard is, is there any substantial
3 circumstantial evidence. And to determine whether or not
4 there is substantial circumstantial evidence it is going
5 to require the Court to do some weighing. But I think as
6 far as Mr. Lewis is concerned it is mere speculation, it
7 is conjecture, it is surmise and those aren't sufficient
8 to give it to the jury. On the issue of aiding and
9 abetting, Your Honor, I move for a directed verdict on
10 that ground, on that case, on the basis, there is no proof
11 of aiding and abetting. If anything in this case there is
12 proof that there is no aiding and abetting at all. If we
13 had the burden of proving there was a lack of aiding and
14 abetting we would have met it in this case because there
15 is no testimony they worked together. No evidence they
16 concocted any story together, there is no evidence at all
17 in this case that they assisted each other in any manner
18 in injuring this child. There is not a scintilla of
19 evidence that Mr. Lewis touched the child even once prior,
20 they allege that aiding and abetting started on August the
21 1st of 2009. There is not a scintilla of evidence that he
22 did anything to that child. Even if there is some
23 evidence on the night in question there is not a scintilla
24 of any aiding and abetting prior to August 1 of 2009.
25 There is not a scintilla of evidence that he ever hurt the

1 child, there is not a scintilla of evidence that she knew
2 he had hurt the child and permitted him to continue to be
3 around the child. So, there is simply no evidence at all
4 aiding and abetting. What ultimately the Court is going
5 to have to decide, to be frank with the Court, if the
6 motion for a directed verdict is denied is not whether or
7 not the aiding and abetting because that is simply
8 nonexistence but which one actually committed the crime.
9 And that is a flip of the coin and the flip of the coin is
10 not a reasonable doubt, I mean by a stretch of the
11 imagination.

12 THE COURT: Ms. Mayes, what is the State's position
13 regarding Mr. Wise's motion on behalf of Mr. Lewis. And
14 address both the aiding and abetting with regard to both
15 defendants, what is necessary for the State to produce
16 enough evidence to sustain the aiding and abetting charge.

17 MS. MAYES: Yes sir, Your Honor. The aiding and
18 abetting is knowingly aiding and abetting another person
19 to commit child abuse or neglect which again includes acts
20 or omissions. It is the State's position that Mr. Lewis
21 has not been forthcoming in his statements to law
22 enforcement. There have been a number of inconsistencies
23 in the history that Mr. Lewis has given to medical staff
24 as well as law enforcement, changes in history concerning
25 when the child went to bed, changes in history concerning

1 how many times he checked on the child as well as
2 different stories that Mr. Lewis has indicated just
3 concerning the overall events of that night. As for the
4 aiding and abetting, Your Honor, it does include
5 concealing information. It is the State's position that
6 if he were the only one awake then he would have, it is
7 logical to conclude that he would have information
8 relating to this particular charge leading up to the
9 events of when she was found in the crib. The lack of
10 information suggest that he has not been forthcoming and
11 it does suggest concealment. In addition, Your Honor,
12 there has been testimony from Dr. Ward that the child
13 suffered from hypoxia, appearing to indicate that she did
14 not receive immediate medical care of treatment which
15 resulted in swelling of the brain. Again, it is based on
16 the testimony that we provided concerning how the house is
17 laid out and the proximity of both of these parties to the
18 child's bedroom and the testimony or the statements
19 provided by Mr. Lewis that he was routinely checking on
20 the child during the night. It is logical to conclude
21 that she was not given immediate medical care which would
22 be another foundation for aiding and abetting, the
23 commission of child abuse. Your Honor, there has also
24 been testimony that the child had numerous bruises when
25 she was first found by EMS. The bruises were of different

1 color, again that is circumstantial evidence without
2 scientifically being able to date the bruises. But Ms.
3 Hepburn has acknowledged being aware of an abdominal
4 bruise, a chin bruise as well as what she termed to DSS
5 being a fingerprint bruise and never being able to account
6 for how her child was injured in any way. And it is
7 logical to conclude that she was aware that her child was
8 being injured. And in addition to that we have provided
9 information that Mr. Lewis also had regular contact with
10 the child as well as caring for her, taking her out of the
11 crib on occasion and it appears that the child was
12 suffering from significant bruises and neither party was
13 acting in the best interest of the child in order to
14 followup on the origin of these bruises.

15 THE COURT: With regard to the aiding and abetting
16 charge, Ms. Mayes, what is your understanding of what the
17 law requires. I believe what we have or at least what the
18 jury has been presented with at this particular point and
19 time which of course is what I have to be concerned with.
20 They received testimony from several physicians that a
21 child who suffers these kind of injuries obviously would
22 not be acting normally in the hours preceding or the hours
23 following the injuries. And so it is quite clear based
24 upon the evidence which the State has presented that the
25 child was injured some time after it was, the child was

1 initially put to bed. You are correct that this is a
2 circumstantial evidence case. All indications are that it
3 would of had to have been one of these two individuals who
4 actively shook the child, took it upon themselves to shake
5 the child and to cause the injuries. I think that is a
6 fair and reasonable deduction in light of the
7 circumstantial evidence that has been presented. Is it
8 the State's contention that the prior injuries to the
9 child, the one, we also had of course the testimony of the
10 paternal grandmother of the child and the father of the
11 child about the injuries which they were concerned with in
12 the week prior to the child's death, perhaps it was two
13 weeks prior to the child's death. But I believe that the
14 testimony was that week immediately preceding the child's
15 death. Of course there is that evidence as well. Would
16 you care to address, Ms. Mayes, the aiding and abetting
17 issue in light of what I just said. It is all indications
18 are that these injuries occurred as a result of these
19 injuries that that child was hospitalized shortly after,
20 probably within four to five hours of the injuries taking
21 place, 911 is contacted and the child goes to the
22 hospital. There was a very brief period of time and I
23 think that the State, in the light most favorable to the
24 State the State has to prove substantial evidence which,
25 substantial circumstantial evidence which would warrant

1 sending the homicide by child abuse charges with both
2 defendants to the jury. Help me again on the aiding and
3 abetting. What is the State's position with regard to
4 that, Ms. Mayes, so that I understand where you are coming
5 from on this.

6 MS. MAYES: Yes sir, Your Honor.

7 THE COURT: I am not sure, I have some hesitation on
8 that charge, just as Mr. Wise correctly points out there
9 doesn't seem to be this acting in concert with regard to
10 injuries that actually killed the child.

11 MS. MAYES: Yes sir, Your Honor. That is addressed
12 in the case of State versus Holder wherein that particular
13 case Randy Holder was ultimately convicted of homicide by
14 child abuse and I do have a copy of that case.

15 THE COURT: We are looking for our copy as well.

16 MR. WISE: What is the cite on that case.

17 MS. MAYES: That is 676 SE2d 690. I would allege
18 that in this particular case Ms. Holder was ultimately
19 convicted of homicide by child abuse.

20 THE COURT: This particular case and correct me if I
21 am wrong. Is this the one where the principal abuser was
22 tried in his absence and apparently there was sexual
23 activity going on between the child and the codefendant,
24 actually committed the abuse.

25 MS. MAYES: Yes sir, Your Honor. In this particular

1 case Ms. Holder was not accused of inflicting the fatal
2 injuries but she was accused of having knowledge of
3 previous bruises that led up to the opportunity for the
4 abuser to ultimately commit the fatal injury. And in that
5 case the Court acknowledged not only her acts but her
6 omissions and made particular references throughout the
7 case to the omissions committed by Ms. Holder and her
8 failure to protect the child and the inference that the
9 jury could reach that she had allowed injuries to be
10 inflicted without actually inflicting herself. And part
11 of the thing that they considered was that there was
12 evidence of previous harm to the child. And in this case
13 the State has presented evidence according to Ms. Hepburn
14 the child was experiencing numerous bruises that she could
15 not explain in the weeks leading up ultimately to the
16 death of the child including an abdominal bruise that she
17 has acknowledged to the SLED agent. And that particular
18 abdominal bruise, the testimony is consistent with child
19 abuse, a non-accidental injury as well as the bruise that
20 Ms. Hepburn herself termed to the Department of Social
21 Services being a fingerprint bruise. Now, according to
22 Holder this is sufficient for the case to be submitted as
23 homicide by child abuse. But to answer the Court's
24 question concerning the aiding and abetting, that
25 particular section requires knowingly aiding and abetting

1 another person to commit abuse or neglect. And again,
2 that can include through acts or omissions. This
3 particular charge on the indictment, I believe it is dated
4 September the 1st or August the 1st of 2009 through the
5 13th. And so certainly the State's position is that Ms.
6 Hepburn knowingly was allowing or creating a scenario in
7 which her child could be fatally injured by the other
8 person. And as to Mr. Lewis, although he is not a parent
9 or guardian the statute does not require that he have any
10 legal duty to the child. The statute requires only
11 knowledge and there is certainly evidence that he was
12 having direct contact with the child on multiple occasions
13 removing her from the crib. I believe the testimony was
14 that he helped dress one of the children that night and
15 again we have a child who has unexplained bruises and two
16 caregivers here who the State's position is created a
17 situation where she was allowed to be abused and
18 ultimately the fatal injuries were inflicted. Again the
19 State's position is that both Ms. Hepburn and Mr. Lewis
20 had not been forthcoming in their statements and I believe
21 the jury can conclude that or may logically conclude that,
22 based on the circumstantial evidence of how the home is
23 set up, the proximity they were in to each other that
24 night. The fact that Mr. Lewis has acknowledged going
25 back and forth from the kitchen to Ms. Hepburn's bedroom

1 as well as into the child's bedroom multiple times
2 throughout the night. And Ms. Hepburn has acknowledged
3 those as well that she was awakened several times during
4 the night by Mr. Lewis coming and going. She had stated
5 to law enforcement that she was reading a children's book
6 to her son yet no books were recovered from the room.
7 There is certainly evidence where the jury can conclude
8 that neither have given a forthcoming statement to law
9 enforcement concerning their knowledge of the events.
10 This is very similar to the case of State versus Smith, a
11 2004 case, that is 597 SE2d 888. In that particular case
12 both defendants were ultimately convicted, not only of
13 homicide by child abuse but also aiding and abetting
14 homicide by child abuse. In this case, State versus
15 Smith, a child was fatally injured in a motel room in
16 Myrtle Beach. And neither parent ever acknowledged having
17 knowledge of how the child was injured. It is very
18 similar to this case or both state that the child was in
19 their care on this particular occasion and the child
20 suffered fatal injuries. Neither gave information to law
21 enforcement acknowledging any event that could have
22 produced the injuries and ultimately without the State
23 proving who delivered the fatal blow both were convicted
24 of homicide by child abuse and aiding and abetting
25 homicide by child abuse. And based on the changing

1 histories provided by both Ms. Hepburn and Mr. Lewis
2 concerning when the child went to bed, certain events
3 being left out as they talk to different people along the
4 way the State's position is that it is logical for the
5 jury to conclude that they are not getting an accurate
6 history of the events that night. And that would be
7 concealment or knowingly aiding and abetting or covering
8 up the crime whether it was committed by Mr. Lewis or Ms.
9 Hepburn.

10 THE COURT: Thank you, Ms. Mayes. Mr. Able or Mr.
11 Wise, anything that you want to say in response to what
12 Ms. Mayes put on the record?

13 MR. ABLE: Judge, after all of that I still think
14 what they have said is she was just present. That is the
15 bottom line, they haven't added anything after all of
16 that. As far as the failure to intervene, I think there
17 would have to be some showing that my client knew or had
18 knowledge which, that the child was being injured or
19 abused. I just think that the State has failed to provide
20 substantial evidence in this case to raise it to the level
21 of where it should be sent to the jury. As I said before,
22 a suspicion is not enough and that is all they have here.

23 MR. WISE: I just point out here, in Holder there was
24 evidence that the woman lied about the source of injuries
25 which obviously would compute some knowledge to her that

1 the other person inflicted the injuries. And here, I
2 mean, when we have got such a vague concept of even when
3 these bruises were inflicted I don't know how that proves
4 anything other than pure speculation. I mean every expert
5 who testified said that they cannot date bruises. And the
6 only bruise you can talk about that was known to exist
7 before was the bruise on the forehead of the child which
8 every expert that testified was consistent with a sixteen
9 month old child falling on the floor. So there is nothing
10 there that really says anything about any knowledge of any
11 abuse by one party or the other before that particular
12 night.

13 THE COURT: All right. Mr. Able and Mr. Wise, I
14 respect and appreciate your motions. Having reviewed the
15 State versus Mitchell which of course is a circumstantial
16 evidence case. I do find that the State has produced
17 sufficient substantial circumstantial evidence from which
18 a reasonable jury could conclude that either defendant is
19 guilty of the charges made against them. Of course at
20 this point and time I am concerned with the existence or
21 the nonexistence of evidence. And certainly there is
22 medical testimony as well as circumstantial evidence from
23 which a jury would be free to conclude that either
24 defendant was guilty of the charges brought against them
25 with the timeframes reflected in the indictments.

1 Certainly mere presence is something which would be
2 charged to the jury at the same time that the jury would
3 be free to conclude that either defendant was guilty of
4 the charges made certainly based upon the jury's evaluation
5 of the witness' credibility. The jury would similarly be
6 entitled to conclude based upon the evidence that
7 certainly that either of the defendants are not guilty of
8 the charges made. So, given the light most favorable to
9 the State at this point and time I would deny y'all's
10 motions. Mr. Wise, you have an additional motion?

11 MR. WISE: I have an additional motion, Your Honor.
12 I would move to dismiss the charges against Richard
13 Brandon Lewis on the grounds of judicial estoppel. The
14 principle of the judicial estoppel has been long
15 recognized in South Carolina and I primarily refer to the
16 case of State Versus McCall which is 364 SC 2005, 612 SE2d
17 453. That is the only case that discussed judicial
18 estoppel in context of criminal law. I will have to tell
19 the Court that the Court of Appeals did not specifically
20 recognize judicial estoppel as it applies to a criminal
21 case by the same token they did not recognize it either.
22 They simply held the facts of that case had not been
23 proven. I would pass up to the Court and if we can have
24 the original I would appreciate it as a Court's exhibit,
25 the transcript of the testimony at the DSS hearing held on

1 May 18th of 2010. And I would like to introduce that as a
2 Court's exhibit. In that case the State of South Carolina
3 through the Department of Social Services had an interest
4 in placing Ashley Hepburn on the central registry list.
5 And the issue was there that she abused her child. The
6 State called in that case Richard Brandon Lewis as a
7 witness, put him on the stand and used his testimony that
8 he didn't harm that child, that he heard her stomp into
9 the room and therefore he believed she did it. They used
10 his testimony to get into the record or get a finding from
11 the Judge that she caused abuse to her child. And I think
12 the State is now judicially estopped because the State
13 again is judicially estopped from coming in and saying now
14 we don't believe Richard Brandon Lewis. I would point out
15 to the Court that if the State had come up with additional
16 facts or additional evidence in the time between, the time
17 he testified in May of 2010 and the time we started this
18 trial then there would be a good argument that it would
19 not apply because the facts changed. Well the facts
20 haven't changed. The same facts known by the State when
21 he testified at the DSS hearing are the same facts are
22 known by the State today. And the State took his
23 testimony, asked the Judge to believe it, the Judge did
24 believe it and the Judge found that there was basis to put
25 her on the central registry based upon his testimony. And

1 I think they are judicially estopped now from prosecuting
2 this case.

3 THE COURT: My Clerk pulled up State v. McCall. It
4 would appear, Mr. Wise, that you are correct in the sense
5 that the Court is silenced whether or not judicial
6 estoppel could apply in the context of the criminal case
7 so as to estop the State from, estop the State from
8 proceeding against your client. The elements apparently
9 of judicial estoppel as the State v. McCall are that there
10 are two inconsistent positions taken by the same party or
11 parties who are privy with one another. The positions are
12 taken in the same or related proceedings involved in the
13 same party or parties within privy of one another. The
14 party taking the position must have been successful in
15 that position and receiving some benefit. The
16 inconsistency must be part of an intentional effort to
17 mislead the Court and finally the positions must be
18 totally inconsistent. My recollection was that the DSS
19 hearing took place in the Spring of last year, is that
20 correct, and then your client, Mr. Lewis was arrested in
21 October of last year?

22 MR. WISE: September, took place in May 18th of 2010
23 and Mr. Lewis was not arrested until September of 2010.

24 THE COURT: So four months after he offered this
25 testimony on behalf of DSS he was then arrested?

1 MR. WISE: That is correct.

2 THE COURT: Ms. Mayes, what is the State's position
3 with regard to Mr. Wise's motion regarding judicial
4 estoppel?

5 MS. MAYES: Yes sir, Your Honor. First pursuant to
6 State versus McCall, this would not be the same party.
7 The Department of Social Services is a State agency, it is
8 a completely separate State agency from the prosecuting
9 agency in this case which would be the Solicitor's office
10 who work with the prosecution is a completely different
11 purpose in terms of a court hearing. That would have been
12 a family court hearing in order to enter Ms. Hepburn on
13 the central registry for abuse and neglect. Again, with
14 neglect also being a component. In that particular case,
15 as far as I know, DSS did not reach any agreements with
16 Mr. Lewis or his counsel. They called him as a witness
17 based on one of the statements that he had given to law
18 enforcement along the way. Now, they certainly had other
19 evidence that was presented in that case as well to
20 substantiate that Ms. Hepburn may have had knowledge of
21 child abuse or neglect. So, Your Honor, the State's
22 position that we are not the same party and is in no way a
23 related proceeding, it is not related at all, that be the
24 non-criminal court action. And then ultimately another
25 factor that the Court looked at is whether the

1 inconsistency is an intentional effort to mislead the
2 Court and certainly that is not the case. If anything Mr.
3 Lewis now being charged is an attempt to bring both
4 parties to justice or to allow the Court and ultimately
5 the jury to make a determination as to the involvement of
6 one or both parties in the death of Audrina Hepburn.

7 THE COURT: All right. We will mark the transcript
8 as Court's 8. No objection from the State or Mr. Wise as
9 marking this as Court's 8?

10 MS. MAYES: No, sir.

11 MR. ABLE: No, Your Honor.

12 THE COURT: Very good. It is Court's 8.

13 (Whereupon, Court's Exhibit 8 was marked for
14 identification only.)

15 THE COURT: Mr. Wise, with regard to that motion,
16 having reviewed the case that you have cited I do not
17 believe that that case would apply so as to judicially
18 estop the Solicitor's office or Ms. Mayes from proceeding
19 against your client in this venue. And just so I am
20 clear, there is no assertion that there has been any sort
21 of user transactional immunity extended to your client in
22 return for his testimony at the DSS hearing. He basically
23 testified of his own is my understanding.

24 MR. WISE: He was called by the State in that case.

25 THE COURT: Okay. But there is no prior

1 understanding or prior agreement that you are seeking in
2 regard to that testimony?

3 MR. WISE: No, sir.

4 THE COURT: Your motion is denied, Mr. Wise, thank
5 you. Additional motions, anything else we need to address
6 at this point and time?

7 MR. ABLE: No, sir.

8 MR. WISE: No, sir.

9 THE COURT: I would like to speak briefly with your
10 clients on the record addressing them concerning their
11 fifth amendment rights to testify or to not testify. I am
12 quite certain, Mr. Able and Mr. Wise, that y'all have gone
13 over with them at length their fifth amendment rights.
14 But out of abundance of caution I would like to speak with
15 them briefly right now about that if that is okay with
16 y'all.

17 MR. WISE: No problem.

18 THE COURT: All right. Ms. Hepburn and Mr. Lewis, if
19 you would, you can both stay seated while I am asking you
20 these questions. But I would ask that you both raise your
21 right hands at this point and time so that I can put you
22 under oath and make sure that you understand the
23 ramifications of what I am about to explain to you.

24 Ashley Hepburn, after being duly sworn,
25 testified as follows:

1 to offer a defense at this time?

2 MR. ABLE: Yes, sir.

3 THE COURT: Bring the jury back, please.

4 MR. ABLE: Let me make sure I understand your
5 question.

6 THE COURT: Were you going to call any witnesses?

7 MR. ABLE: Yes, sir.

8 THE COURT: Bring the jury, please.

9 (Whereupon, the jury came into open court at
10 approximately 11:05 a.m.)

11 THE COURT: The record should reflect that the jury
12 is back with us. Ladies and gentlemen of the jury, we are
13 continuing with the trial in this case. At this point,
14 Mr. Able, call your first witness.

15 MR. ABLE: We would call Brenda Wulfekotte.

16 Brenda Wulfekotte, after being duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION

19 By Mr. Able:

20 Q Ms. Wulfekotte, where are you employed?

21 A I am employed at the Children's Center in Greenwood.

22 Q And what is that?

23 A The Children's Center is a pediatric office, it is an
24 affiliate of Carolina Health Centers.

25 Q And what is your job there?

1 A I am a nurse practitioner.

2 Q And what education do you have to become a nurse
3 practitioner?

4 A I have my Masters in parent child nursing and I
5 obtained a family nurse practitioner after graduation.

6 Q And how long have you been employed as a family nurse
7 practitioner?

8 A Thirteen years.

9 Q And as it concerns this case have you ever had an
10 opportunity to examine **Victim** Hepburn?

11 A I have.

12 Q And do you know when that was?

13 A The exact date?

14 Q Do you have your record with you?

15 A May I look at my notes?

16 Q Yes, you may.

17 A It was September 11th of 2009.

18 Q And how old was **Victim** at that time?

19 A She was fifteen months old.

20 Q And who brought her in on that visit on September the
21 11th?

22 A Her mother did.

23 Q Now, on September the 11th what was the chief
24 complaint, let me ask you this way. Why was **Victim**
25 brought in that day?

1 A She was brought in for her checkup, her well child
2 checkup.

3 Q And was there any complaint that her mother related
4 that day that she had?

5 A She said she had noticed a rash on the trunk, on the
6 chest last night, the night before.

7 Q And did you note anything other than the rash in her
8 trunk. Did you notice anything in the complaint that day?

9 A As part of the history as a nurse I identified that
10 there had been a cold two weeks ago. And that she had,
11 sorry, vomited also at that time, two weeks prior.

12 Q Now, what was **Victim**'s general appearance on
13 September the 11th of 2009?

14 A She was a very pretty little girl, smiled at me,
15 quiet, not real, real talkative but interacted well during
16 the physical.

17 Q I am sorry?

18 A She interacted with me appropriately during the
19 visit.

20 Q And you say it was Ms. Hepburn that brought her in
21 that day?

22 A Yes.

23 Q Did you examine her as concerns to the rash?

24 A Yes, as part of the physical exam.

25 Q And did you make any determination as to what you

1 believe that rash was?

2 A She had light pink flat rash over her trunk that was
3 blanchable, meaning when I pressed on it it faded. At the
4 end as I looked upward she had two small red rash,
5 non-blanchable points on either side of her neck. The
6 overall impression that I had was that it was a viral
7 rash.

8 Q We are talking about two, right?

9 A That is right.

10 Q The one on the trunk and then Ms. Hepburn, I think
11 you said, pointed out these--

12 A No, I pointed them out.

13 Q You pointed those out. She pointed out the one on
14 the stomach?

15 A That is correct.

16 Q And so we are talking about two different things.
17 Now, you mentioned the word, blanchable, what is that?

18 A When you look at what appears to be a rash on the
19 body you always blanch it, you push down firmly and drag
20 your finger over it. If the color disappears it is a
21 typical skin rash. If it does not disappear it is called
22 a petechia.

23 Q The rash you mentioned a moment ago on the trunk, you
24 said it looked, appeared viral?

25 A Viral.

1 Q And that is just a rash caused by a virus?

2 A Yes.

3 Q And many different things will cause those type
4 rashes?

5 A That is correct.

6 Q That is not unusual for a toddler that age?

7 A No.

8 Q Blanchable, as I understand as you explained,
9 basically you, if you apply pressure and it goes away it
10 is blanchable, correct?

11 A That's right.

12 Q The one on the chest was blanchable?

13 A Yes.

14 Q Now, as to the two non-blanchable petechia on either
15 side of Victim's neck, when you pointed those out to mom
16 how did she react?

17 A She was surprised.. She had been looking at the
18 overall rash and when I showed to her those two marks did
19 not fade, when I pushed on them she was concerned and
20 asked me what they were.

21 Q And did you explain that to her?

22 A Well, I explained what the petechia were and I
23 explained that there could be different reasons for them.

24 Q Now, what instructions did you give Ms. Hepburn
25 concerning the rash itself, the petechiae and the other

1 rash?

2 A I explained that I thought the rash on her trunk was
3 just a post-viral rash and should fade in the usual five
4 to seven days after illness. Then I showed her again the
5 little marks on her neck, explained that they could be
6 nothing more as an also viral case. But if they do
7 increase in number or if there were any other symptoms
8 that the child displayed that she needed to come back to
9 the office immediately.

10 Q On that day, September the 11th of 2009, what was
11 your impression as to the cause of the petechia on the
12 side of the neck?

13 A Because of the rash on the trunk my initial
14 impression was that they were probably part of the viral
15 illness all together. As a result of the coughing the
16 mother had mentioned which was the cough two weeks
17 earlier, you could also see them with prolonged hard
18 coughing. So, with only two small marks I wasn't
19 particularly concerned at that time.

20 Q That is true, petechia on a child like that can be
21 caused by hard coughing?

22 A That's correct.

23 Q Vomiting?

24 A Yes.

25 Q Stressful crying?

1 A Yes.

2 Q Now, there is a lot of things that cause petechiae on
3 a child?

4 A Yes.

5 Q Okay. Now, who held Victim during the examination?

6 A The mother did.

7 Q And did she appear appropriately concerned when you
8 examined the child and pointed these things out to her?

9 A Yes.

10 Q How did she and the child interact?

11 A She smiled at her, she petted her, she did everything
12 that I expected her to do as a caring mother.

13 Q Now, your record reflects also that as part of the
14 history that the child walks with help?

15 A Yes. The visit as put in as a twelve month visit.

16 Even though at the time Victim was fifteen months old and
17 when I pushed the developmental button what popped up was
18 twelve months but I had seen her walking in the office.

19 Q And the status for the rash you noticed was it
20 stable?

21 A At that time.

22 Q You didn't have any concerns about anything at that
23 time with the rash?

24 A I always have concerns.

25 Q I didn't mean that, I mean you indicated it was

1 stable, you thought it was something that could be
2 watched?

3 A That's right.

4 Q And you had told the mother to return if it appeared,
5 it began to spread?

6 A That is correct.

7 Q Now, Nurse Wulfekotte, you as a nurse, you are
8 required by statute in this state to report any suspected
9 child abuse or neglect, aren't you?

10 A Correct.

11 Q And as a result of your examination of Victim
12 Hepburn that day and what you saw did you have any
13 concerns that this child was being abused?

14 A No.

15 Q Were you aware that Victim was brought back the next
16 day?

17 A Yes.

18 Q Did you see her then?

19 A No, I, as I said I am always concerned about petechia
20 so I had asked my office nurse to call her as a status
21 call the next morning to again ask if there had been any
22 change in behavior, appearance of the rash and mother
23 indicated that she thought that it had spread and she was
24 asked to come back into the office and she did.

25 Q She brought the child back the very next day?

1 A That's right.

2 Q Thank you, that is all I have.

3 THE COURT: Ms. Mayes.

4 CROSS-EXAMINATION

5 By Ms. Mayes:

6 Q Just to clarify, Nurse, you are one of several
7 providers there, correct?

8 A That's correct.

9 Q And I believe Dr. Philpott that we heard from
10 previously is also at the same center?

11 A That's right.

12 Q And then there is another nurse and she is Nurse
13 Platt, is that correct?

14 A That's correct.

15 Q And Nurse Platt is also a nurse practitioner like
16 yourself?

17 A Correct.

18 Q Now, you mentioned that Victim came in on September
19 11th, is that correct, that is when she saw you?

20 A That's correct.

21 Q And she was fifteen months at that time?

22 A Yes.

23 Q But she was coming in for her, what is normally the
24 one year check?

25 A That is correct.

- 1 Q The one year well baby check, right?
- 2 A Yes.
- 3 Q So, she had not been brought in when she was one year
- 4 for that one year well baby check?
- 5 A Correct.
- 6 Q And she had not been brought in at thirteen months?
- 7 A I don't believe so.
- 8 Q Or at fourteen months, correct?
- 9 A You are talking for the well baby check?
- 10 Q Right. And she had not been brought in ultimately
- 11 until fifteen months on that, right?
- 12 A Correct.
- 13 Q Now, isn't it that when a child has missed
- 14 vaccinations that go along with the well baby check at one
- 15 year y'all make contact with parents, don't you?
- 16 A Do you mean do we call them?
- 17 Q Right.
- 18 A No.
- 19 Q You don't acknowledge that they are behind on their
- 20 vaccinations to come in?
- 21 A We do not do that.
- 22 Q So, she came in at fifteen months and your testimony
- 23 that she came in mainly because of the rash on the trunk?
- 24 A She came in, according to the records, for a well
- 25 child checkup, that is what she had scheduled.

1 Q And that would include her vaccinations?

2 A That's correct.

3 Q And during the course of that is that you noticed the
4 trunk or she pointed that out to you?

5 A No, she came in and told the nurse that a rash had
6 appeared the night before.

7 Q When you say trunk, you are referring to like her
8 stomach and sides?

9 A Yes.

10 Q And you said that during the course of the exam at
11 looking at her trunk what did you notice?

12 A That she had a light pink flat blanchable rash.

13 Q What else did you notice and point out to her?

14 A Two small marks, one on either side of her neck that
15 did not blanch.

16 Q And I want you to take a look at these photographs,
17 these are State's exhibit 18 and State's exhibit 19. Is
18 this what we are talking about here, the petechia along
19 the neck?

20 A There were not that many petechia, there were just
21 two little spots at the time I saw her on either side of
22 her neck.

23 Q So, if on the 17th she appeared this way, you don't
24 believe that is how she appeared when she first came in
25 your office?

1 A Not that I recall.

2 Q I want you to take a look at this one. This is
3 State's exhibit 19.

4 A There were just two small marks.

5 Q So, you don't think that looks the same?

6 A No.

7 Q So, that looks like something in addition to what you
8 observed in that first exam, would that be correct?

9 A Correct.

10 Q And then after you saw her on the 11th which did not
11 look like this she came back in later on the 16th,
12 correct?

13 A I don't have the exact dates in front of me. I
14 thought it was sooner than that but I don't know.

15 Q I am going to show you a record and ask you whether
16 or not you recognize it as well as this one?

17 A I recognize it, I did not write this.

18 Q What is that document?

19 A You have a phone followup that Cheryl asked to have
20 one. She came in the day after I saw her on the 12th and
21 saw Ms. Platt. And then she came back on the 16th again
22 to see Ms. Platt.

23 Q And just to clarify, you saw her again on the 11th
24 and she would have come in the next day and seen the nurse
25 practitioner Platt?

1 A That's correct,

2 Q And then she would have come back again on the 16th
3 to see the nurse practitioner Platt, correct?

4 A Yes.

5 Q Now, Mr. Able was asking you about how Ms. Hepburn
6 appeared with **Victim**, was anyone else with Ms. Hepburn?

7 A No, they were alone, just the two.

8 Q And are you aware that when she came back on the 16th
9 Dr. Philpott and Nurse Platt had a discussion about the
10 appearance of the neck marks and considered and noted
11 possible abuse in the differential diagnosis?

12 A Did I know at the time, no. Did I know over time
13 that she had come back, yes.

14 Q Okay. So, they did not at that point and time
15 consult with you about what you had seen?

16 A No, but I can't tell you where I was on the 16th
17 either.

18 Q So, at that point and time they really didn't know
19 that what they were looking at is different in appearance.
20 In other words, the photos we are looking at was different
21 in appearance than what you had seen on the 11th. They
22 wouldn't have known that, would they?

23 A Well, they would have known where I chart it which
24 was two small marks on either side of the neck.

25 Q But did you photograph it?

1 A No.

2 Q Okay. So, they weren't present in the room when you
3 did your exam on the 11th, correct?

4 A No.

5 Q So ultimately were you made aware that Victim was
6 later killed in her home as a result of homicide
7 approximately one month later?

8 A I knew she had died, the details I was not aware of.

9 Q So, you weren't aware that she died as a result of
10 child abuse?

11 A Over time it was apparent as it came out in the
12 paper, they told me about it.

13 Q That is all I have.

14 THE COURT: Mr. Wise.

15 CROSS-EXAMINATION

16 By Mr. Wise:

17 Q Petechiae can be caused by pinching or grabbing the
18 neck, is that correct?

19 A Yes.

20 Q Did you discuss with Ms. Hepburn anything about a
21 physical injury could have caused that petechia?

22 A I did not ask her specifically about physical, I
23 asked her if the child wore a tight shirt, if she had
24 necklaces on because many children do.

25 Q And you never mentioned the word choking to her?

1 A No.

2 Q The one on the stomach you say Ms. Hepburn pointed
3 out to you?

4 A Correct.

5 Q And the one on the neck you pointed out to her?

6 A I pointed out the difference.

7 Q You pointed the difference between the two?

8 A Yes.

9 Q Did she ever point out the ones on the neck to you
10 before you pointed, before you discussed it with her?

11 A No.

12 Q Thank you.

13 THE COURT: Mr. Able.

14 REDIRECT EXAMINATION

15 By Mr. Able:

16 Q Nurse Wulfekotte, when you or your office advises a
17 parent or trust a parent to bring a child back is that
18 what you expect them to do?

19 A Yes.

20 Q And did my client do that in this case?

21 A Yes.

22 Q She did it twice, didn't she?

23 A Yes.

24 Q She was told to come back if the rash appeared to get
25 worse, she did that on both occasions, didn't she?

1 A That's correct.

2 Q On September the 12th Ms. Mayes was asking you, not
3 only Nurse Platt saw her but Dr. Pike I believe saw her as
4 well, correct?

5 A Yes.

6 Q And he examined her on September 12th of 2009?

7 A Correct.

8 Q I don't know if Dr. Pike is a man or a woman.

9 A I believe he is a man, Daniel Pike.

10 Q I didn't know, I was just referring, he examined her
11 that day as well?

12 A Yes.

13 Q That is all I have.

14 RECROSS-EXAMINATION

15 By Ms. Mayes:

16 Q What do you mean when you stated that you pointed out
17 the difference between the marks on the neck and what you
18 termed the rash on her stomach area?

19 A Most families when they bring children in with a rash
20 they just see rash. But the difference between a
21 blanchable and a non-blanchable rash is not something that
22 parents usually notice the difference until we show them
23 how you check for the difference.

24 Q So, it was not the same type of rash on the stomach
25 as you observed on the neck?

1 A No. They were different.

2 Q Nothing further.

3 THE COURT: You may step down.

4 MR. ABLE: Judge, we would ask that she be released.

5 THE COURT: No objection, Ms. Mayes and Mr. Wise in
6 releasing this witness?

7 MS. MAYES: No objection.

8 MR. WISE: No objection.

9 THE COURT: You are free to go. Mr. Able.

10 MR. ABLE: We call Hazel Davenport to the stand.

11 Hazel Davenport, after being duly sworn,

12 testified as follows:

13 DIRECT EXAMINATION

14 By Mr. Able: . . .

15 Q Ms. Davenport, where do you live?

16 A I live in Cross Hill.

17 Q How long have you lived there?

18 A About eight years, it will be eight years in April.

19 Q How do you know my client, Ashley Hepburn?

20 A She is my granddaughter.

21 Q Where do you live in relationship or in relation to
22 your daughter's home there in Cross Hill?

23 A My daughter lives in front and I live right back
24 behind her.

25 Q And that has been that way for eight years that you

1 have been in Cross Hill?

2 A Yes.

3 Q Now, Ms. Davenport, I want to ask you some questions
4 concerning your great-granddaughter, Victim Hepburn,
5 okay?

6 A Yes.

7 Q Now, I believe there was an incident where Victim
8 had chipped her tooth?

9 A Yea.

10 Q Do you remember that?

11 A Yes, I remember that.

12 Q Okay. Where did that happen?

13 A In my yard.

14 Q And who was there?

15 A Me, Victim, Owen and another two-year old, he is
16 about a year older than Owen is and we were playing in the
17 swimming pool.

18 Q So it was you, Victim, Owen and one of their
19 playmates?

20 A Yes.

21 Q And where did this take place at?

22 A In my yard.

23 Q And you say they were playing in the swimming pool?

24 A Yes.

25 Q Where was Ashley at?

1 A She brought them over to play, to see the chickens
2 and play around. And she was gone for about an hour. I
3 thought she had went back to the house but I don't know
4 where she went because I was busy playing with the baby.

5 Q And what kind of swimming pool was it that they were
6 playing in?

7 A It is a little loose swimming pool about that big
8 around.

9 Q What is it made out of?

10 A Plastic.

11 Q Just one of these plastic swimming pools?

12 A Yes, that you buy at Walmart.

13 Q Go head, what were you going to say?

14 A It was about this big around and had about that much
15 water in it and they were playing in the water.

16 Q She liked to be in the water?

17 A Yes.

18 Q And where were you in relation to the swimming pool,
19 where were you, were you sitting there, standing there,
20 what were you doing?

21 A I was standing there and Owen was in another swimming
22 pool, he had a big one and Victim had the little one.
23 But I was close to Victim but she stood up on, she stood
24 up like this.

25 Q Talk into the microphone now, she did what?

1 A She stood up on the swimming pool like this and then
2 she tipped over and she busted her mouth.

3 Q All right. So, she was, correct me if I am wrong,
4 she was pulling up on the side of the pool?

5 A Yes.

6 Q And she flipped over the side of it?

7 A Yes.

8 Q And what part of her body hit the ground?

9 A Her mouth.

10 Q Did she get injured?

11 A Yes.

12 Q What happened?

13 A Her mouth was bleeding.

14 Q And what did you do when you saw the blood in her
15 mouth?

16 A I washed the blood off of her and set her back in the
17 swimming pool.

18 Q Did she cry?

19 A She just whimpered.

20 Q When did Ashley get there?

21 A It wasn't long after that she came.

22 Q She came home after that?

23 A Yes.

24 Q And did Ashley have an opportunity to see Victim
25 then?

1 A Yes.

2 Q And what did Ashley notice about her?

3 A I told her that she hurt her mouth, that she had fell
4 out of the swimming pool and mashed her mouth. She looked
5 at Audrina's mouth and she said Victim Vi tooth is broke.

6 Q Who said [REDACTED] V tooth is broke?

7 A Ashley did. I didn't look to see if it was broke
8 right then.

9 Q So, Ashley picked her up and looked at her mouth and
10 saw that her tooth had been broken?

11 A Yes.

12 Q Was Ashley any where near her when her tooth got
13 broken that day?

14 A No.

15 Q That is all I have.

16 CROSS-EXAMINATION

17 By Ms. Mayes:

18 Q Ms. Davenport, you say that this occurred on your
19 property?

20 A Well, it is not my property, it is my daughter's
21 property. I live right behind my daughter in another
22 trailer.

23 Q In other words, you live right behind Ms. Hepburn and
24 her mother, Doris, correct?

25 A Right.

1 Q You and your husband, Marvin?

2 A Yes.

3 Q Well, how often was Victim with you back then?

4 A Back then, she would come over about once a week to
5 play in the swimming pool, play with the other little boy
6 and play with Owen.

7 Q And who is the other little boy?

8 A He is the nextdoor neighbor, he was about three or
9 four years old at that time.

10 Q Is she playing inside of your house or outside your
11 house?

12 A She played outside the house. I don't let young-ins
13 play in the house.

14 Q Do what?

15 A I don't let young-ins play in the house.

16 Q Well, you are married to a convicted sex offender,
17 correct?

18 A Right.

19 Q All right. And Marvin Davenport, he is on the sex
20 offender registry, that is your husband, for criminal
21 sexual conduct with a minor, correct?

22 A Right.

23 Q Is that why you don't let the kids in your house?

24 A Well, he wasn't there. But he comes home about 5:30
25 in the evening. The young-ins is done gone by then. I

1 let them in the house but I don't let them run and play in
2 the house.

3 Q Now, when we are talking about the particular event
4 with Victim you mentioned that you took something and you
5 wiped her mouth?

6 A Yes, I washed the blood off and set her back in the
7 swimming pool.

8 Q And when you washed her mouth you didn't see a
9 chipped tooth?

10 A I didn't wash the inside of her mouth, I just washed
11 her mouth off.

12 Q What type of ground did she fall on, the dirt?

13 A Yes, it is hard though.

14 Q And she fell on hard dirt?

15 A Yes.

16 Q And your testimony is that Ashley became aware at
17 some point she had chipped her tooth, correct?

18 A Yes. Ashley went to see how bad she hurt her mouth
19 when she came.

20 Q And do you know why Ashley would have told other
21 family members that she didn't know how she got the
22 chipped tooth?

23 A No.

24 Q You can't explain that?

25 A I can't explain that.

1 Q Okay. Thank you, nothing further.

2 CROSS-EXAMINATION

3 By Mr. Wise:

4 Q Ashley was going where that particular day?

5 A I don't know where she went, she went back to the
6 house and I don't know where she went.

7 Q She didn't tell you where she was going?

8 A No, I don't ask her.

9 Q Did she tell you when she was coming back?

10 A In about an hour.

11 Q Okay. Now, Mr. Lewis has been over to your house
12 before, hasn't he?

13 A Who?

14 Q Mr. Lewis, Brandon Lewis?

15 A Yes.

16 Q And he has been out with the children, playing with
17 the children too?

18 A No.

19 Q He didn't play with the children at your house?

20 A No.

21 Q He just came over to visit with Ashley?

22 A Yes.

23 THE COURT: Ms. Davenport, thank you very much for
24 coming. You are free to go now.

25 MR. ABLE: May we approach.

1 THE COURT: Yes.

2 (Whereupon, a bench conference was held in the
3 presence of the jury but out of the hearing of the
4 jury.)

5 THE COURT: Ladies and gentlemen of the jury, I am
6 informed that the next witness may take a while. We will
7 take our lunch break for today. Be back at 2:00 o'clock
8 and don't discuss the case with anyone, friends or family
9 or anyone. Thank you and we will see you back at 2:00.
10 Thank you very much.

11 (Whereupon, the jury was excused from open court for
12 a lunch break.)

13 THE COURT: The jury is out and anything before we
14 break for lunch from the State?

15 MS. MAYES: Nothing from the State, Your Honor.

16 MR. ABLE: No, sir.

17 MR. WISE: No, sir.

18 THE COURT: See you at 2:00 o'clock.

19 (Whereupon, a lunch break was taken.)

20 THE COURT: Before we bring the jury back in I want
21 to note for the record that I received a communication
22 from one of the alternates, Jeff Poltorak,
23 P-O-L-T-O-R-A-K. It is signed but it is basically a
24 letter to me. I have shared this letter with counsel for
25 the defendants as well as Ms. Mayes. I gave them a copy

1 of the letter. I am going to ask it to be marked, it was
2 received by the Court from the bailiff after our lunch
3 break. And I ask it be marked as Court's 9. I have
4 shared the contents of the letter and with counsel in
5 chambers and I would ask that certainly counsel be
6 diligent in watching the jury. Please, if you notice any
7 issues with the attentions, with the jurys attention, if
8 you notice any of the jurors are beginning to suffer from
9 fatigue please bring that to my attention. Just ask, even
10 if we are in the middle of cross or direct just inform me
11 that you have a matter that you need to discuss at sidebar
12 and let me know. I am also going to ask that the Clerk of
13 Court and my Clerk periodically, as often as you can, just
14 scan the jury for any sort of militia of fatigue. I
15 realize the attorneys are going to be focused on their
16 cases. I want to be alerted to any concerns that anybody
17 in the courtroom may have about the jury getting tired or
18 any of the jurors getting tired. Anything else we need to
19 deal with regard to that letter that I received from that
20 alternate?

21 (Whereupon, Court's Exhibit 9 was marked for
22 identification only.)

23 MS. MAYES: Nothing from the State, Your Honor.

24 THE COURT: Mr. Able?

25 MR. ABLE: No, sir.

1 THE COURT: Mr. Wise?

2 MR. WISE: No, Your Honor.

3 THE COURT: Mr. Able, we are still in your case, it
4 is your intention to call your client next?

5 MR. ABLE: Yes, sir.

6 THE COURT: Let's have the jury.

7 (Whereupon, the jury came into open court at
8 approximately 2:30 p.m.)

9 THE COURT: Mr. Able, call your next witness.

10 MR. ABLE: We call Ashley Hepburn to the stand.

11 Ashley Hepburn, after being duly sworn,
12 testified as follows:

13 DIRECT EXAMINATION

14 By Mr. Able:

15 Q How are you, Ashley?

16 A Nervous.

17 Q You are nervous. Are you used to speaking in front
18 of people?

19 A No, I am not.

20 Q You know why we are here?

21 A Yes, I do.

22 Q Where do you live?

23 A Greenville County.

24 Q And how old are you?

25 A Twenty-three.

- 1 Q Where did you grow up?
- 2 A Greenville County.
- 3 Q And who are your parents?
- 4 A Doris Davis and David Tolley.
- 5 Q Where does your mother live?
- 6 A She lives in Cross Hill, South Carolina.
- 7 Q The Cross Hill section of Laurens County?
- 8 A Yes.
- 9 Q And where did you go to school?
- 10 A Clinton High School.
- 11 Q Did you graduate?
- 12 A Yes.
- 13 Q When?
- 14 A In 2006.
- 15 Q Did you go to school after that?
- 16 A For a little while.
- 17 Q And where did you go?
- 18 A Piedmont Technical College.
- 19 Q And when was that, do you remember?
- 20 A Not really sure on the date.
- 21 Q What did you study while you were there?
- 22 A Was going into nursing.
- 23 Q How long were you there?
- 24 A Two to three months, not long.
- 25 Q Do you work now?

- 1 A Yes.
- 2 Q Where do you work?
- 3 A I work at Huntin' Camp BBQ and Grill.
- 4 Q What do you do there?
- 5 A I am a waitress.
- 6 Q How long have you worked there?
- 7 A Approximately seven months.
- 8 Q Prior to that did you work?
- 9 A Prior to that I worked at Peers, (phonetic).
- 10 Q Where at?
- 11 A In Greenville, South Carolina.
- 12 Q What did you do there?
- 13 A I was a waitress.
- 14 Q You are married to Mr. Daniel Hepburn, is that
- 15 correct?
- 16 A Yes.
- 17 Q And when did you and Daniel marry?
- 18 A July 28th of 2006.
- 19 Q Where did the two of you get married at?
- 20 A We got married at Laurens County Court House.
- 21 Q And how long did you know Daniel before you and he
- 22 married?
- 23 A About two years.
- 24 Q When did y'all start dating?
- 25 A In August of 2004.

1 Q So, y'all were both in school together?

2 A Yes, we were.

3 Q Is he a little bit older than you or y'all are about
4 the same age?

5 A He is two years older.

6 Q When did Daniel graduate from Clinton?

7 A He didn't graduate.

8 Q And after, were y'all dating when he was suppose to
9 graduate?

10 A Yes, we were.

11 Q What did he do after graduation?

12 A He went to Florida with his dad.

13 Q What was he doing there?

14 A He took up a job doing trade shows.

15 Q And how was the relationship if he was in Florida and
16 you were here in school?

17 A Well, we tried a long distance relationship and I
18 followed him out there.

19 Q You followed him to Florida?

20 A Yes, I did.

21 Q And so you moved down there?

22 A Yes.

23 Q And where did you live while you were down there?

24 A We lived in a house off of Colonial Avenue.

25 Q Who lived in the home?

1 A Myself, Daniel Hepburn and Daniel's father, Patrick.

2 Q And while you were in Florida, how old were you when
3 you went down there?

4 A Sixteen.

5 Q And what did you do while you were in Florida?

6 A I went to Edgewater High School and I also worked at
7 Hooter's as a hostess and worked at Andrews Agency as a
8 secretary.

9 Q How long were you in Florida?

10 A From March of 2005 until October of 2005.

11 Q Now obviously you stayed in Florida, where did you
12 and David go from there?

13 A We moved back to South Carolina.

14 Q Y'all come back together as a couple?

15 A We did.

16 Q When y'all get back where did you and Daniel live?

17 A We lived together at my mom's house in Cross Hill.

18 Q How many children do you and Daniel have?

19 A Two.

20 Q And what are their names?

21 A Owen Parker Hepburn and Victim Claire Hepburn.

22 Q And how old is Owen?

23 A Owen is four.

24 Q When did you find out you were pregnant with Owen?

25 A April of 2006.

1 Q And so from what I remember you testifying to, you
2 and Daniel married after you found out you were pregnant?

3 A Yes, we did.

4 Q Was Daniel working at the time?

5 A Not at that time.

6 Q I think he had testified earlier, he had been in the
7 military?

8 A Yes.

9 Q And he had joined the National Guard, when was that?

10 A I think the fall of 2006.

11 Q And was he working any where else other than the,
12 well let me ask you this. What did his duty with the
13 National Guard entail?

14 A He would go once a month on the weekend and doing
15 training exercises with the National Guard.

16 Q And was he working any where else?

17 A I think or I know while he was waiting to be sent out
18 for basic training he worked at Whiteford's in Clinton.

19 Q You said y'all were living with your mom?

20 A Yes.

21 Q What were you doing during that time?

22 A During that time I worked at Ingle's in Laurens.

23 Q When did he leave for basic training?

24 A He left for basic, I believe it was the fall of 2006.

25 Q And where did they send him for basic training?

1 A To Fort Knox.

2 Q And while Daniel was at Fort Knox in basic training
3 where were you living?

4 A I lived with his mom, Rita Hepburn at their home.

5 Q And Daniel was born, I am sorry, Owen was born when?

6 A [REDACTED] 2006.

7 Q And so would Daniel have been at basic training
8 during that time?

9 A Yes, he was.

10 Q Where was he when Owen was born?

11 A He got to come home for two weeks to, for a Christmas
12 break and that is when Owen was born.

13 Q And you were living with Ms. Ebel?

14 A Yes.

15 Q When Owen was born, where did you and Owen live after
16 his birth?

17 A We lived with Rita Ebel.

18 Q And how long was, how long was Daniel out at Fort
19 Knox?

20 A In Fort Knox a total of nine weeks.

21 Q And when did he graduate from there?

22 A In January of 2007.

23 Q You were still living with MS. Ebel?

24 A Yes, I was.

25 Q Where did he go from there?

- 1 A From there he had to do college courses, AIT.
- 2 Q AIT, is that what you said?
- 3 A Yes, army training.
- 4 Q And where was that?
- 5 A That was in Fort Gordon, Augusta, Georgia.
- 6 Q All right. So, did he complete that training?
- 7 A He did.
- 8 Q And when did he complete that?
- 9 A Summer of 2007.
- 10 Q Now, did you move down there while he was doing this
- 11 training. How long was he training?
- 12 A He was in training for a total of 21 weeks and I
- 13 would go down and visit him on the weekends.
- 14 Q And who would go with you to visit?
- 15 A Owen and myself would go some.
- 16 Q So, y'all went every weekend?
- 17 A Yes, we did.
- 18 Q Now, he wasn't active duty at that time?
- 19 A No, not at that time.
- 20 Q Now, when he, when Daniel got out of AIT training in
- 21 Augusta did he come back home?
- 22 A Yes, he did.
- 23 Q And did the three of you, Daniel you and Owen live at
- 24 Ms. Ebel's house?
- 25 A We did for a short period and we decided to move to

1 Greenville.

2 Q Move where?.

3 A To Greenville, South Carolina.

4 Q So, you moved to Greenville?

5 A Yes.

6 Q Who moved to Greenville?

7 A Owen, me, Daniel and our dog.

8 Q Your dog, okay. Were you working during that time?

9 A After we arrived, got a job at Hooters.

10 Q In Greenville?

11 A In Greenville.

12 Q Was Daniel working?

13 A After we arrived he got a job at a car dealership.

14 Q How much were you working during that time you were
15 married?

16 A Approximately forty hours a week.

17 Q And how were the family finances during that time?

18 A Not very good.

19 Q Did the financial problem cause any problems in the
20 marriage?

21 A They did, just not being able to pay all the bills
22 and I would say it definitely created problems.

23 Q What daycare arrangements had been made for Owen?

24 A For Owen, my dad and my sister would come throughout
25 the week to babysit.

1 Q That was while you and Daniel worked?

2 A Right.

3 Q And did that have to end at any time?

4 A Eventually just with the schedules, their schedules
5 in general, they weren't able to come as much as I needed
6 and so I had to quit my job.

7 Q Did that increase the financial problems within the
8 family?

9 A It did.

10 Q And what did it eventually lead to?

11 A Eventually just unable to pay our bills and having,
12 being evicted.

13 Q And did you and Daniel separate during that part of
14 your marriage?

15 A We did.

16 Q And when was that?

17 A That was in December of, December, January, December
18 through January of 2007.

19 Q Whose decision was it for you to leave?

20 A Daniel's.

21 Q What did he tell you?

22 A That he wanted a divorce.

23 Q And after he told you that what did you do?

24 A I tried talking things out, we tried talking things
25 out together with no avail. Eventually I called my mom

1 and dad and they helped me move my things out.

2 Q You said that was around December of '07, January of
3 '08?

4 A It was January of '07.

5 Q Okay. I might be mistaken. So, you came back to
6 Cross Hill?

7 A Yes, I did.

8 Q Where did Daniel go from there?

9 A He moved to Spartanburg with his friends.

10 Q And when did you find out you were pregnant with
11 Victim

12 A In January of 2008.

13 Q So, it would of been right, you would of moved out
14 December of '07, January of '08?

15 A Correct.

16 Q Is that right?

17 A Yes.

18 Q And so you found out you were pregnant in January of
19 '08, when did you get pregnant with Victim

20 A The doctor told me Thanksgiving, November.

21 Q November of '07?

22 A Yes.

23 Q And so you and Daniel would have been living together
24 in November of '07?

25 A Yes, we were.

1 Q Now, did you tell, when did you tell Daniel you were
2 pregnant?

3 A As soon as I left the doctor's office.

4 Q And what was his response?

5 A Collected, just trying to talk things out.

6 Q And when you say talk things out, what do you mean?

7 A Well we had been separated and just when I found out
8 I was pregnant we talked about working things out.

9 Q Did you do that?

10 A We did.

11 Q I think Daniel had mentioned something earlier, last
12 week about he had been sent to Egypt?

13 A He was.

14 Q When was that?

15 A That was the end of November.

16 Q Of '07?

17 A Of '07.

18 Q So, when did y'all reconcile?

19 A January of 2008.

20 Q So, y'all had only been separated a month or a little
21 over, correct?

22 A Yes, a month or so.

23 Q Now, after you and Daniel reconciled what did you do
24 as far as a job?

25 A He went into active duty, he got signed up and

1 followed through with that.

2 Q And where was he assigned to?

3 A He was assigned to Washington State.

4 Q And who went out there with him?

5 A I did and Owen did and our dog.

6 Q How did y'all get out there?

7 A By a Penske Truck, a U-Haul type truck.

8 Q Okay. Where did y'all live in Washington?

9 A We lived in a third story apartment building.

10 Q Where at?

11 A Lakewood, Washington.

12 Q And when was it that you would have arrived down in
13 Washington?

14 A We arrived I would say in May of 2008.

15 Q So you were, that is while you were pregnant with
16 Audrina?

17 A Yes, that is correct.

18 Q And what was Daniel's job at that time?

19 A Communications.

20 Q And what was his work schedule like?

21 A Anywhere from 5:00 to 6:00 a.m. in the morning to
22 6:00 or 7:00 p.m., it just varied on a daily basis.

23 Q So, he was working a pretty good bit?

24 A Yes.

25 Q Where were you working?

1 A I didn't have an outside job, I was just a stay at
2 home mom.

3 Q And when was Victim born?

4 A She was born June 6th of 2008.

5 Q And how was she delivered?

6 A Emergency C-section.

7 Q Why was it an emergency?

8 A The placenta detached and I started having her early.

9 Q Was she full term?

10 A No, she was eleven weeks early.

11 Q How long was she in the hospital?

12 A For a total of eight weeks.

13 Q How much did she weigh at birth?

14 A Two pounds and nine ounces.

15 Q When did you get to bring her mom?

16 A July 28th of 2008.

17 Q Now, so you say she was in the hospital about eight
18 weeks?

19 A Yes.

20 Q Was somebody there with her all the time, you or
21 Daniel, somebody stay there all the time?

22 A We couldn't be there all the time.

23 Q Where was Daniel during that time?

24 A During the day he would be at work.

25 Q And during the day where would you be?

1 A At home with Owen.

2 Q Now, when would you get to go to the hospital?

3 A When Daniel would come home from work we would do
4 dinner and then within an hour or two I would leave to go
5 to the hospital to be with her.

6 Q Okay. How often did you go to the hospital?

7 A Every day.

8 Q And what time of the day would you go to the
9 hospital?

10 A It would range from 8:00 or 9:00 p.m. or later until
11 12:00 or 1:00 a.m., sometimes later.

12 Q Did you have to make any special arrangements while
13 **Victim** was in the hospital, anything you had to do
14 special to be with her?

15 A I brought her breast milk every day so I would pump
16 my breast and then bring in breast milk for her and she
17 was, like they had a tube that she was fed through.

18 Q She started out on tube feeding?

19 A Yes.

20 Q How long did that last?

21 A Until she was about thirty four weeks old.

22 Q So, thirty four weeks from birth?

23 A She still needed the tube but she was able to try and
24 breast feed, like up at thirty four weeks of age. She
25 still needed the tube until a week or two before she was

1 out, like, you know, until she was let out of the NICU.

2 Q Okay. That is what I was asking. She started to
3 breast feed before she left the hospital?

4 A Correct.

5 Q Okay. So, you pumped your breast every day so you
6 would have milk to take Victim to the hospital?

7 A Yes.

8 Q And that would be fed to her with a tube until she
9 learned how to breast feed?

10 A Correct.

11 Q And you did this every day?

12 A Every day.

13 Q Now, again during the day you were up with Owen?

14 A Yes, I was up with Owen during the day.

15 Q And that was while Daniel worked?

16 A Yes.

17 Q And then you would go to the hospital each night to
18 be with Victim?

19 A Yes.

20 Q And when did Daniel get a chance to visit Victim?

21 A He was working during the day, he said he stopped by
22 sometimes during the day or he would try to go on
23 weekends.

24 Q And was, why couldn't you take Owen with you at
25 night?

1 A In the NICU they had an age restriction, it was ages
2 eight and older, I think, just because children that age
3 tend to get sick easier. And then just being in that kind
4 of environment they could unplug something.

5 Q After the eight weeks being in the NICU what was
6 Victim health like?

7 A It was really good. She got to go home early, her
8 actual due date was August 22nd and because she was five
9 pounds, six ounces she got to leave.

10 Q And after she got home were there any problems in the
11 marriage at that time?

12 A Still financial troubles and also just, we were
13 trying to cope with her preterm delivery, we were still
14 going through things like that. And then also I needed
15 help with the kids and didn't have it because he was at
16 work.

17 Q And what eventually happened?

18 A Eventually we talked about it, I talked about needing
19 help and needing family around. And eventually I left.

20 Q When was that?

21 A That was October of '08.

22 Q Why did you leave?

23 A He told me to leave.

24 Q What?

25 A Daniel told me to leave.

- 1 Q And where did you go to?
- 2 A We went to Cross Hill.
- 3 Q You say, we, who is we?
- 4 A Owen and Audrina and myself.
- 5 Q How old was **Victim** at that time when you left?
- 6 A She was about five months old.
- 7 Q How did you and the children get back here?
- 8 A By plane.
- 9 Q Daniel was still in Washington?
- 10 A Daniel was still in Washington.
- 11 Q And where you were working when you got back to South
- 12 Carolina?
- 13 A I wasn't working when I got back, I was just staying
- 14 at home with the kids.
- 15 Q Why didn't you get a job?
- 16 A I wanted to stay home with the kids.
- 17 Q And you lived with your mother, Doris Davis?
- 18 A Yes.
- 19 Q And where does she work?
- 20 A She works at Caterpillar in Newberry.
- 21 Q What arrangements did you and she make about you
- 22 staying at home with the kids?
- 23 A She and I agreed that it would be good for the kids
- 24 that if I stayed home. So financially she said she was
- 25 okay so we worked it out that way.

1 Q The children weren't in school?

2 A No.

3 Q Owen would have been how old during that time?

4 A He was turning two.

5 Q So, he hadn't started any type of prekindergarten or
6 anything like that?

7 A No.

8 Q So you were staying at home taking care of the kids?

9 A Yes.

10 Q There was some testimony last week about Daniel
11 having tried to commit suicide while he was out in
12 Washington. When did you first learn about that?

13 A January of '09 he called me and just told me that he
14 was thinking about it or something.

15 Q Thinking about what?

16 A Committing suicide.

17 Q And what concern did that cause you?

18 A Well, at first he was telling me to tell the kids, he
19 told me to tell the kids he loved them and that he loved
20 me and that caused me great concern. I didn't know
21 whether he was serious at first or not. And I mean I was
22 really worried.

23 Q And what did you do in response to that worry?

24 A I called his mom first thing.

25 Q What else did you do?

1 A I called his first sergeants and some of his people
2 that were in his platoon.

3 Q When you found that out he had in fact tried to kill
4 himself what did you do in response to that.

5 A I got the first ticket out there that I could get to
6 Washington State.

7 Q And how long was he in the hospital?

8 A He was in the hospital, like, the hospital part for
9 about two days and then he was in the psych ward for about
10 three.

11 Q And why did you go to Washington?

12 A He is the father of my kids, I was very worried about
13 his health and you know I cared about him, cared about
14 him.

15 Q He is still your husband too, right?

16 A Yes.

17 Q He still is?

18 A He still is.

19 Q And how long were you out there?

20 A Two to three weeks.

21 Q And did you and he have any discussions during that
22 time about the separation and y'all's marriage or anything
23 like that?

24 A We talked about a lot of things while I was out
25 there, reconciling, trying to work things out. Either me

1 moving back or him moving back to South Carolina.

2 Q Where did you stay while you were out there?

3 A With one of his friends that was in his platoon, his
4 wife.

5 Q Now, Daniel testified last week that during the time
6 you were out there you hit him, can you tell me about
7 that?

8 A That night we were out with people we knew, people I
9 had been introduced to and we went out and we both got
10 pretty intoxicated and just, we had an argument. We were
11 talking about just things about our marriage, things that
12 hurt me and I hit him.

13 Q Was he drinking and driving?

14 A Yes, he was.

15 Q And was he arrested?

16 A He was.

17 Q And did you ever hit him before?

18 A No.

19 Q Have you hit him since then?

20 A No.

21 Q Why was it you hit him?

22 A Why did I hit him?

23 Q Yes.

24 A Just reaction from what we were talking about and--

25 Q Were you upset?

1 A I was very upset, I was intoxicated.

2 Q And do you have any criminal record?

3 A No.

4 Q Prior to this have you ever been arrested?

5 A No.

6 Q Now after Daniel was discharged from the Army where
7 did he live?

8 A After he was discharged he moved in, he moved to
9 Mountville, South Carolina.

10 Q And who did he live with?

11 A He lived with his mom, Rita Ebel, his step-dad, his
12 two younger sisters and his girlfriend, Sharla.

13 Q And who?

14 A And his girlfriend, Sharla.

15 Q And when was it that he was discharged from the Army?

16 A June of 2009.

17 Q Now, you have previously filed for separation from
18 Daniel, correct?

19 A Correct.

20 Q When was that?

21 A I filed in December of '08.

22 Q Was there a court hearing?

23 A There was.

24 Q When was that?

25 A In May of '09.

1 Q And what did you and Daniel agree to concerning
2 custody and visitation?

3 A That I would have custody and that we would arrange
4 him to visit with the kids as our schedules didn't
5 conflict.

6 Q Was there any set, what I am trying to ask you, was
7 there any set periods of visitation set for him or was it
8 just as y'all could agree upon?

9 A Just as we could agree upon.

10 Q Now, did that work out well as far as the visitation?

11 A Yes.

12 Q Since you were arrested in this case what agreement
13 have you and Daniel reached about your seeing Owen?

14 A That he has full custody but my dad can supervise and
15 at his home.

16 Q So you are seeing your son?

17 A Yes.

18 Q And is that with the permission of Daniel?

19 A It is.

20 Q Is there any set period of visitation for you?

21 A Right now it has been every weekend.

22 Q And who agreed to that?

23 A Daniel.

24 Q And that is every weekend?

25 A Every weekend unless there is something that he and

1 his family are doing.

2 Q Okay. Now, when was the last time you visited with
3 your son?

4 A This past weekend.

5 Q And where did you visit with him?

6 A At my mom's.

7 Q Who was present then?

8 A My dad.

9 Q Where is your visitation with Owen usually take place
10 now?

11 A It usually takes place at my dad's.

12 Q And prior to your father being a supervisor with your
13 visitation with Owen who was the supervisor?

14 A Daniel was.

15 Q That was by agreement?

16 A By agreement.

17 Q And when did he start supervising your visitations?

18 A I believe it was Christmas day of 2009.

19 Q So that would of been December of 2009?

20 A Yes.

21 Q And that would have been a couple of months after
22 Victim death?

23 A Yes.

24 Q What was the agreement that you and Daniel had at
25 that time as far as your seeing Owen?

1 A Just it was based on his schedule but that he would
2 bring Owen up.

3 Q During that time how often were you visiting him?

4 A Two to three days a week, it usually ended up being a
5 weekend.

6 Q And how would Owen get to your father's home?

7 A Daniel would drive him up to Greenville.

8 Q How would Owen get back to Mountville from your
9 father's home?

10 A Daniel would drive him home.

11 Q So if Daniel was supervising where would Daniel be
12 during the visitation?

13 A With me and Owen.

14 Q And how long would he stay with you and Owen at your
15 father's home?

16 A Two to three days, he would stay the night.

17 Q And where would he sleep?

18 A With me and Owen.

19 Q You and he discuss reconciliation during that time?

20 A We did.

21 Q And how often was that conversation between you and
22 him?

23 A Since October of 2009.

24 Q Have you continued that conversation?

25 A We have.

1 Q Since [Victim] death have you and Daniel continued a
2 sexual relationship?

3 A We have.

4 Q How old is Owen now?

5 A He is four.

6 Q And prior to October of 2009, your children were
7 living with you in Cross Hill, correct?

8 A Yes.

9 Q And how often was Daniel visiting during that time,
10 prior to October of 2009?

11 A It just ranged somewhere between two to five days a
12 week.

13 Q There was no set schedule?

14 A No set schedule, no sir.

15 Q Where would Daniel, during that time prior to October
16 of 2009, where would Daniel visit with [Victim] and Owen?

17 A I would either bring the kids over to his mom's house
18 where he lived or sometimes on occasion he would be at my
19 house, at my mom's.

20 Q And who would make these arrangements concerning
21 Daniel seeing the children?

22 A We would make them together.

23 Q And would you make those arrangements, did you ever
24 schedule visitations with anybody else?

25 A With his mom, Rita.

1 Q Prior to October of 2009 did you and he ever have any
2 problems with visitation, you refusing him to allow, or
3 you refusing him, to allow him to have the children or
4 anything like that?

5 A Yes, there is one occasion.

6 Q And what was that occasion?

7 A I drove up to his house and was bringing the kids out
8 and as I am walking inside with the diaper bag he told me
9 that his girlfriend had moved in.. And I just told them
10 that I would prefer to meet her first before the kids meet
11 her.

12 Q Why was that?

13 A I didn't know this person and wanted to get to know
14 her and meet her and found out what kind of person she
15 was.

16 Q So, you didn't let the kids visit that weekend?

17 A Not that day.

18 Q And did you later have an opportunity to meet his
19 girlfriend?

20 A I did.

21 Q Did you ever deny Daniel visitation after that?

22 A No.

23 Q Prior to Victim death, October 16th of 2009, prior
24 to the incident of October 13th of 2009 who was the
25 primary caretaker of these children?

1 A I was.

2 Q How much time did you spend with your children each
3 day?

4 A Twenty-four, seven.

5 Q Who would you let babysit for you?

6 A Daniel's mom, my mom and my grandmother.

7 Q Why didn't you have outside babysitters?

8 A I don't trust outside babysitters.

9 Q Now, what was a typical day like with you and your
10 kids prior to October 13th of 2009?

11 A Just go through a normal day?

12 Q What time did you get up?

13 A Victim would wake up at 8:00 in the morning.

14 Q And what would y'all do after you got up?

15 A After we got up we would do breakfast and play with
16 toys and go watch some TV in the living room while they
17 played around with some of the push around toys, go
18 outside if the weather is okay. I fixed their meals
19 throughout the day.

20 Q Who cooked their meals for them?

21 A I did.

22 Q Who played with them?

23 A I did.

24 Q Who cleaned up after them?

25 A I did.

1 Q Who read stories to them?

2 A I did.

3 Q Who gave them their baths?

4 A I did.

5 Q Who took them to the doctor?

6 A I did.

7 Q Who did all the things, when they were in your care,
8 I am not talking about when their dad had them. When they
9 were with you, who did all the things necessary to raise
10 these children to be healthy and well cared for children?

11 A I did.

12 Q I want to ask you some questions about Victim
13 health. How was Victim overall health?

14 A Very good.

15 Q And did she, as a primi did she have any major health
16 problems or conditions that you had to deal with?

17 A No, it was a miracle that she came out without any
18 problems.

19 Q Where did she go to the doctor?

20 A At the Children's Center in Greenwood.

21 Q And how long had she gone there?

22 A Since we had moved back from Washington State.

23 Q Where did Owen go to the doctor?

24 A He went to the same place.

25 Q How was the medical care for Victim paid for?

1 A Initially through Army insurance, Tricare.

2 Q There has been some discussion or some testimony
3 about your having missed a couple of visits at the
4 Children's Center in the summer of 2009. I think there
5 was some testimony or questions or testimony this morning
6 that you missed her twelve month well baby check until she
7 was fifteen months. Why was that?

8 A Daniel had informed me that the insurance was going
9 to be ending and I didn't receive any letters that it was
10 ended until around about that time. And so I went to
11 medicaid and tried to get them enrolled, interviewed,
12 things like that.

13 Q So you had to get their medicaid card before you
14 could take them back to the doctor?

15 A Right.

16 Q So that is why you missed those visits?

17 A Yes, it is.

18 Q When was the insurance through the Army canceled?

19 A I got a letter in the mail saying it was actually
20 canceled in December of that previous year.

21 Q December of '08?

22 A Right.

23 Q As a result of that what happened to the bills from
24 January to the summertime?

25 A They stacked up.

1 Q They sent you an actual bill?

2 A Right.

3 Q And that is when you got the medicaid?

4 A Yes.

5 Q Between November of '08 and September of '09 how many
6 times did you have Victim at the doctors office?

7 A Nine.

8 Q And what were those visits for?

9 A Cough, congestion, runny nose, one visit was for
10 croup and some well child visits.

11 Q And why did you take Victim to the doctor so often?

12 A If I saw there was a problem and I didn't know how to
13 fix it I took her to the doctor.

14 Q Now, Ashley, let me ask you about some questions
15 about the rash that was on Audrina's neck, when did you
16 first notice that?

17 A I think it was the day before the visit, her well
18 child visit.

19 Q What day was her well child visit?

20 A It was the 11th of September of '08.

21 Q September the 11th of '09?

22 A '09, sorry.

23 Q So you would have noticed it the day before?

24 A Yes.

25 Q Let me show you what has been marked as State's

1 exhibit 18 and State's exhibit 19 and ask you if you
2 recognize those pictures?

3 A I do.

4 Q And is that the rash that you saw on Victim neck?

5 A It is.

6 Q And when you saw that rash what did you do?

7 A I discussed it with the doctor at the visit, I was
8 concerned.

9 Q And which visit would that have been?

10 A The initial well child visit.

11 Q All right. So that would have been the September
12 11th of 2009 visit?

13 A Yes.

14 Q And that would have been Nurse Wulfekotte that
15 testified a little while ago?

16 A Yes.

17 Q And why did it concern you, what was the concern
18 about when you saw it?

19 A When I looked at it I had never seen anything on her
20 like that or anything like that on Owen. So, I mean, it
21 looked like a rash but I didn't know what it was.

22 Q And you took her to the doctor that day?

23 A Yes.

24 Q And what other problems did Victim have at the well
25 baby check?

1 A At the visit she had another rash going on her chest
2 as well but other than that, other than that she didn't
3 have any health issues.

4 Q So, she was a well baby?

5 A Yes.

6 Q Now, what were you instructed to do about the rash,
7 when you and Nurse Wulfekotte discussed the rash on the
8 neck, what were you instructed to do?

9 A Just keep watch on it and they told me that if it
10 spread down to her lower chest that there was a rash of
11 meningitis and that was very serious. So to keep watch.

12 Q When did you take Victim back to the doctor?

13 A The next day.

14 Q And what day of the week would that have been?

15 A That was a Saturday.

16 Q Why did you take her back the next day?

17 A Because it spread down and it concerned me.

18 Q The fact that it spread concerned you?

19 A Right.

20 Q And who did you see that day?

21 A That day I saw Nurse Platt.

22 Q Did you see a doctor?

23 A I did, there was a doctor that came in to look at it,
24 Dr. Pike.

25 Q And what did you tell him about the rash on the neck?

1 A I told him that it had spread down to her chest area
2 and they had talked to me the day before about that being
3 a worry.

4 Q And what were you instructed to do then?

5 A Just return as needed.

6 Q And when was the next time you took Victim to the
7 doctor?

8 A A couple of days later, I think it was the following
9 Wednesday.

10 Q So that would have been three times in a seven day
11 period you had taken this child to the doctor?

12 A Yes.

13 Q A six day period, right. Yes, three times in a six
14 day period you had taken this child to the doctor for this
15 rash?

16 A Yes.

17 Q And who did you see on that visit?

18 A On the third visit she saw, we saw Dr. Philpott.

19 Q That was the doctor that testified last week?

20 A Right.

21 Q And why did you take her back three days later, after
22 they had seen her on Saturday why did you take her back on
23 Wednesday?

24 A Well, it wasn't getting better, I didn't notice any
25 improvement and I wanted like answers.

- 1 Q Were they able to give you any answers then?
- 2 A No, they were able to give me a referral to Greenwood
3 Hospital to do a platelet test.
- 4 Q Did you take her to the doctor that day, on the 16th?
- 5 A No.
- 6 Q I am talking about, when you saw Dr. Philpott?
- 7 A I did take her that day, yes sir.
- 8 Q Was anybody with you?
- 9 A No.
- 10 Q And what instructions were you given then about the
11 rash?
- 12 A To return as needed or if symptoms worsen.
- 13 Q Were you ever questioned about any abuse of the
14 child, if somebody hurt the child or anything like that?
- 15 A No.
- 16 Q What were you questioned about?
- 17 A I believe Nurse Platt came in and she asked me if she
18 had a bib on that might have restricted her airway or some
19 kind of clothing with the top button that was too close.
- 20 Q What did you tell her?
- 21 A I told them she doesn't wear a bib, she is sitting
22 up, she is not spitting or anything so I stopped using
23 bibs. And that any clothing that would have been too
24 tight she wouldn't wear, I wouldn't have on her.
- 25 Q You mentioned on that visit, September the 16th of

1 2009 they had scheduled something at Self Regional?

2 A Yes. They scheduled a platelets test.

3 Q And did you take her for that?

4 A It was, actually her father and I agreed that they
5 would, that he would have visitation for that day. So, I
6 talked with him about taking her.

7 Q And when, the last doctor visit was on September
8 16th, when was the test scheduled at Self Regional about
9 having the rash on the neck checked out?

10 A The 17th.

11 Q So, the next day?

12 A Yes.

13 Q So Daniel was suppose to visit the next day?

14 A Yes.

15 Q And you asked him to take Victim to--

16 A To Self Regional.

17 Q Did you discuss with Daniel the rash on her neck?

18 A I just told him what they told me at the doctor's
19 office, that it, that they were looking at possible
20 meningitis and they needed to check her for, her platelet
21 levels to make sure she wasn't hemophiliac and things like
22 that.

23 Q And what was his response to that?

24 A As far as I know he just took her to the doctor.

25 Q Who else, let me ask you this. The day after your

1 third visit to the doctor Daniel had visitation with

2 Victim then?

3 A Yes.

4 Q And how did Owen and Victim get to their father's
5 house for that September 17th visitation?

6 A I drove them.

7 Q Who else did you make aware about this rash on the
8 neck?

9 A My mom, Rita and the rest of my family.

10 Q And what discussions did you and your mom have about
11 it?

12 A We discussed it, I honestly didn't know a whole lot
13 about meningitis. So, we went on line and did some
14 research and found out how serious that it was and so I
15 called my dad and asked that he put in a prayer request at
16 church and pray for her. I was really concerned.

17 Q What eventually happened with the rash?

18 A It resolved itself, it went away.

19 Q Now, Daniel testified last week that you had gotten
20 defensive when he asked you about the rash. Did you get
21 defensive with him?

22 A No.

23 Q What did you tell him?

24 A I told him about the visit, I told him about it being
25 meningitis and things like that. But otherwise I really

1 didn't get defensive.

2 Q Did you do anything yourself, did you do anything to
3 try to treat the rash or try to improve it?

4 A I applied Eczema cream and that is all I knew to do.

5 Q Ashley, what did you do to cause that rash on that
6 child's neck?

7 A Nothing.

8 Q Now, there is also been some testimony about
9 Victim tooth, do you remember that?

10 A Yes.

11 Q Let me show you what has been marked as State's
12 exhibit 22 and ask if that, if you recognize that picture?

13 A Yes, I do.

14 Q And it looks like the left front tooth is chipped?

15 A It is.

16 Q When did you find out she had chipped her tooth,
17 Victim had chipped her tooth?

18 A I had gotten home and went to pick the two of them up
19 and my grandmother had just told me that she had hit her
20 mouth.

21 Q And how old was Victim September of 2009?

22 A Fifteen months.

23 Q How was she walking?

24 A Not very well, she was just pulling up and moving
25 from here and there real quick, she wasn't actually

1 walking.

2 Q And were you present when Victim chipped her tooth?

3 A No, I was not.

4 Q And I have asked you this, when did you first notice
5 it?

6 A As soon as I got to my grandmother's to pick them up.
7 My grandmother had mentioned that she had hit her mouth
8 and her lip was a little swollen. So I picked her lip up
9 and saw it.

10 Q So she was, as your grandmother said, she was in her
11 care at the time?

12 A Yes.

13 Q Did anybody question you about how Victim chipped
14 her tooth?

15 A No.

16 Q Did you talk to anybody about it?

17 A I talked with Rita and I think Daniel was actually
18 around and I talked about taking her to the dentist,
19 trying to find a dentist to get it fixed.

20 Q What concerns did Daniel express about the fact that
21 she had a chipped tooth?

22 A No really big concerns.

23 Q Did you tell Daniel about how it had happened?

24 A I don't know if he asked how it happened.

25 Q Did you offer any information about how it happened?

1 A I did.

2 Q And what did you tell him?

3 A I just told him that she had hit her mouth.

4 Q And what efforts did you make to have the tooth
5 repaired?

6 A I called dentist offices and searched on line to find
7 a place for her to go.

8 Q And did you eventually find a place?

9 A I did.

10 Q And did you make an appointment?

11 A I did.

12 Q And where was that appointment at?

13 A It was at Upstate Dentistry located in Greenwood.

14 Q And why did you pick that place?

15 A A lot of the places I called around wouldn't put her
16 under. I didn't want her to have the traumatic experience
17 of someone fixing her tooth. And the other thing was, a
18 lot of the fillings, a lot of the places the fillings were
19 not going to be white. So, I didn't really want to do
20 that.

21 Q Did you do anything to chip your daughter's tooth?

22 A No.

23 Q Let's move on. I want to ask you some questions
24 about the bruise on Victim forehead. When did you
25 first notice that bruise on her forehead?

1 A She had woke up from a nap one day and it was on her
2 forehead.

3 Q And you say she woke up from a nap, where was she?

4 A She was in her crib.

5 Q Where was the bruise?

6 A It was like in the middle of her forehead.

7 Q I want to show you what has been marked as State's
8 exhibit number 17. Is that the bruise?

9 A Yes, it is.

10 Q And I think this was dated October the 6th of 2009,
11 would that have been about the time you first noticed the
12 bruise?

13 A Within a day, yes.

14 Q Where did Victim sleep in the house?

15 A She slept in a baby crib.

16 Q And when you first noticed the bruise what did you
17 think had caused it?

18 A At first I wasn't really sure as to what caused it.
19 So I had my mom come in and we both kind of looked around
20 the room to see what could have caused this.

21 Q And did you finally come to any type of conclusion of
22 what you thought may have caused it?

23 A Well, the crib bar because it was on her level, the
24 same level, it was kind of the same look. I just assumed
25 it was the crib bar.

1 Q And this is State's exhibit number 20. Is that
2 Victim in her crib?

3 A Yes, and the bar is lowered.

4 Q Okay. And the bar is lowered. And she was just
5 pretty much getting steady on her feet and learning to
6 walk during that time, right?

7 A She was.

8 Q When you came, you and your mom came to the
9 conclusion you thought maybe it was, she had fallen on the
10 crib and got the bruise on her. What did you do to try to
11 remedy that problem?

12 A I talked to my mom about going to Walmart and getting
13 like something to wrap around the top of the bar. I took
14 Victim and we both went to Walmart and we couldn't find
15 anything that was made for the top of a crib bar.

16 Q Now, who saw the bruise, who did you show the bruise
17 to?

18 A My mom, David Crumley, Rita Hepburn.

19 Q Why did you show it to your mom?

20 A I was worried about it, I didn't know where it came
21 from or how it might have happened so I just discussed it
22 with her to see if she had any ideas.

23 Q Now, would it have been, let me stop. She was, in
24 October she was sixteen months old, Victim was?

25 A Yes.

1 Q And did you discipline her in any way?

2 A No.

3 Q Why not?

4 A She was way too young to know right from wrong.

5 Q Did you ever use any spanking or corporal punishment
6 or anything like that on your daughter?

7 A No.

8 Q What about Owen?

9 A Never really had to, any, like punishment. I did try
10 to talk with him whenever he would do something. But on
11 that night I hit him on the backside.

12 Q What night?

13 A The night of October 12th.

14 Q Okay. So you popped him on the backside then?

15 A Yes.

16 Q Was there any other time you ever used any corporal
17 punishment toward Owen?

18 A No.

19 Q After you saw, after Victim had the bruise on her
20 head when did you next take her and Owen to visit with
21 their father?

22 A Within a day or so.

23 Q And how did they get to that visitation as well?

24 A I drove the two of them to their father's house.

25 Q Who did you talk to about the bruise at that time?

1 A Rita had came to the car and I talked with her about
2 the bruise on her forehead and how I thought it had
3 happened.

4 Q I am sorry?

5 A How I thought it had happened.

6 Q And what did you tell her?

7 A I told her that I thought she had hit her head on the
8 crib bar, I thought she had fell.

9 Q And what other bruises did Victim have on her at
10 that time?

11 A None.

12 Q Did you cause that bruise on your daughter's head?

13 A No, I did not.

14 Q Do you know who did?

15 A No.

16 Q Do you know how it was caused?

17 A The crib bar.

18 Q That was your conclusion?

19 A That was my conclusion.

20 Q Had you and Daniel ever talk about the bruise on the
21 forehead?

22 A We talked, just told him that I thought that she hit
23 her head on the crib bar and he kind of agreed with me
24 there.

25 Q Now, there has been testimony from a DSS worker that

1 the day of October 13th of 2009 you described the bruise

2 on her forehead as something that looked like a finger.

3 Is that true?

4 A Yes.

5 Q And why did you describe it like that?

6 A He asked me the size of the bruise.

7 Q And did you tell him about the crib bar too?

8 A I did.

9 Q But in trying to describe it you said it was about
10 the size of a finger?

11 A I did. Me and my mom had, whenever like I brought

12 Victim to her and showed her the bruise. We both
13 discussed, like with the size that it was like a finger
14 size bruise.

15 Q Now, how long did you know, excuse me, how long have
16 you known Brandon Lewis?

17 A Known him, about two years.

18 Q Two years from now?

19 A No, two years from the date, October 12th, two years
20 prior, not counting now.

21 Q How long before October 12th of 2009 had you known
22 Brandon Lewis?

23 A Two years.

24 Q And how did you and he first meet?

25 A At get-together's with friends.

- 1 Q And was he your friend to begin with?
- 2 A No.
- 3 Q Whose friend was he?
- 4 A Nathan's and Daniel's.
- 5 Q Daniel Hepburn?
- 6 A Yes.
- 7 Q And when did you and he start dating?
- 8 A In June of 2009.
- 9 Q Were you and Daniel separated during that time?
- 10 A We were.
- 11 Q How often did you and Brandon see each other?
- 12 A Throughout the week when he would be going to class
- 13 he would stop by or on his way back from class he would
- 14 stop by and then sometimes he would stay the night, a
- 15 couple of nights a week.
- 16 Q You mentioned he was at class, where was he going to
- 17 school?
- 18 A He was going to school at Piedmont Technical, the
- 19 campus located in Greenwood.
- 20 Q Was he working at that time?
- 21 A No.
- 22 Q What was Brandon's relationship with your children?
- 23 A I don't know about a certain relationship, he was
- 24 just there around my kids because they were around me.
- 25 Q And how much was he around Victim ?

1 A If he was around he was around Victim .

2 Q How did Victim react to Brandon?

3 A She would cry and cling to me when he was around.

4 Q Did you think that was unusual?

5 A Not at the time.

6 Q Why not?

7 A I thought that she just didn't take to him.

8 Q Now, there was some prior testimony about you having
9 found Brandon holding Victim in her bedroom, do you
10 remember those occasions?

11 A Yes.

12 Q Tell us about that, what you mean.

13 A Brandon would be on his way to the bathroom and I
14 would hear like whining or crying from her room and I
15 would come in and he would be holding her and when she saw
16 me she would reach for me and I would hold her, take her
17 from him.

18 Q Did you think that was unusual there?

19 A Not at the time because I had conversations with him
20 about his footsteps in the house, walking too loud and
21 waking her up and I thought he was just going to bring her
22 to me.

23 Q And what did you tell him about not going in there
24 when she was asleep or those type of things?

25 A I asked that he not go in there when she was sleeping

1 because it messed with her sleep schedule. I mean, she
2 wakes up, she is a light sleeper and she is going to wake
3 up at certain times but I asked that he not go in there,
4 you know, whenever she was trying to sleep.

5 Q Did he ever do it again?

6 A He did.

7 Q And what did you tell him then?

8 A I told him pretty much the same thing, the importance
9 of not messing up her sleep schedule.

10 Q Did you and Brandon ever have an opportunity to talk
11 about your marriage to Daniel?

12 A We did.

13 Q And what were those discussions?

14 A He asked me if I ever saw myself getting back with
15 Daniel, a lot of occasions.

16 Q What did Brandon express to you about how he felt
17 about Daniel?

18 A He didn't like Daniel, he expressed that. He asked
19 me if I cared for him than I did for Daniel, he wanted to
20 know.

21 Q Anything else?

22 A He seemed jealous of Daniel.

23 Q I want to ask you about October the 12th of 2009.
24 How did your day start off that morning?

25 A Early in the morning Victim woke me up saying, mama,

1 mama. So, I went in there and changed her diaper, dressed
2 her. And Owen woke up with the commotion and I dressed
3 him and I pulled out some toys for them to play with in
4 their room and went in the kitchen and started making
5 breakfast for them.

6 Q What time did y'all get up?

7 A She woke up around 8:00 which she did almost every
8 morning.

9 Q And where did Victim and Owen sleep that night?

10 A That night Victim was in her crib and Owen was in
11 his little toddler bed.

12 Q That was in the same room?

13 A Yes.

14 Q And where did you sleep?

15 A I slept in my room in my bed.

16 Q Who else was in the home when the three of you got up
17 that morning on October the 12th of 2009 at 8:00 o'clock,
18 who else was in the home at that time?

19 A No one, it was just me and the kids.

20 Q You said you went to prepare breakfast, what did you
21 have for breakfast that morning?

22 A We had marsh mellow cereal at Owen's request.

23 Q And after breakfast what did y'all do?

24 A After breakfast, well I cleaned them up and went back
25 to their room, played with some toys, took some stuff to

1 the living room, watched some TV and that kind of thing.

2 Q How long did y'all do that?

3 A Up until around about 2:00 p.m.

4 Q And what did you do then?

5 A Victim was going down for a nap and actually I got
6 Owen to go down for a nap as well, so we all napped.

7 Q How long did y'all nap?

8 A Until around about 4:00, around about that, I don't
9 know exactly the time but it was when Brandon was knocking
10 at the door and woke me up.

11 Q Who woke you up?

12 A Brandon.

13 Q Mr. Lewis?

14 A Yes.

15 Q He was knocking at the door?

16 A Yes.

17 Q Now, so it would have been, what time did he come in
18 that day?

19 A I guess around 4:00 but it could have been earlier
20 than that.

21 Q Who came in after them?

22 A My mom and David Crumley came after that.

23 Q What time did they usually get home?

24 A 4:30 or so.

25 Q What did y'all do while Brandon was there?

1 A While Brandon was there I think we just talked and
2 the kids were in the living room playing.

3 Q How long was Brandon there before your mom and Mr.
4 Crumley got there?

5 A Thirty minutes or so.

6 Q How long was he there after your mother came in and
7 Mr. Crumley?

8 A About ten minutes.

9 Q Where were Victim and Owen while Brandon was in the
10 home at that time?

11 A With me in the living room.

12 Q What were they doing?

13 A Just playing with each other.

14 Q While Brandon was in the home did you and he have any
15 problem, I am talking about that afternoon when he stopped
16 by.

17 A My mom was sitting in the rocking chair in the living
18 room and the kids were playing and we were sitting on the
19 couch and Brandon takes one of the couch pillows and just
20 hits me in the face with it. And I thought it was
21 something playful so I take a pillow and I go to hit him
22 back in the face with it.

23 Q And how did he react to your hitting him back in the
24 face, how did Brandon react when you hit him back in the
25 face with the pillow?

1 A He jerked the pillow and he was like don't you ever
2 hit me in the face again.

3 Q How did he say that?

4 A Very angry, kind of shocking.

5 Q Why?

6 A Because I thought it was more of a playful thing.

7 Q Did Brandon leave that afternoon?

8 A He did.

9 Q And why did he say he had to leave?

10 A He said he had to get home to his grandmother.

11 Q So when Brandon left who was in the home?

12 A My mom, David, my mom's boyfriend who is David and
13 Owen and myself and Victim .

14 Q At that point how was Victim ?

15 A She was really happy, like chattering with all of us.
16 Just very, she was very well.

17 Q Did you notice any problems about her, anything about
18 her, anything that you notice unusual or odd about her at
19 that time?

20 A No.

21 Q After Brandon left what did you and the children do?

22 A After Brandon left we sat in the living room for a
23 little bit and I was talking along about making dinner.

24 Q Who was sitting in the den with you and the kids?

25 A My mom.

1 Q What time did y'all eat dinner that night?

2 A Dinner was later, I guess on the time around 8:00 to
3 8:30ish.

4 Q Why was it late?

5 A The steaks weren't actually unfrozen yet so we had to
6 wait on that.

7 Q Who cooked?

8 A I cooked like the stovetop stuff and David grilled
9 the steaks.

10 Q Where did Audrina eat dinner that night?

11 A In her highchair sitting in front of me.

12 Q And who else ate that night?

13 A Owen, my mom and David.

14 Q And what was **Victim** doing during dinner?

15 A She was real happy, giggling, she actually when she
16 finished eating fed the dogs, she reached behind her seat
17 and started feeding the dogs her steak.

18 Q And did you notice any problems with her at that time
19 that was unusual or odd?

20 A No, she was really happy, everybody was really happy
21 then.

22 Q After dinner what happened?

23 A After dinner my mom, well I carried some of the
24 plates into the kitchen, I didn't really do a whole lot of
25 cleanup there. And then I went to run bath water.

1 Q And who was getting a bath?

2 A Owen and Victim .

3 Q So you ran that bath water?

4 A Yes.

5 Q And where was your mother and David during that time?

6 A David had already headed to bed for the night and my
7 mom was on her way to bed and she noticed that Victim was
8 excited, she heard the bath water and Victim was on her
9 way in there so she helped her to the bathroom.

10 Q And how did she help her to the bathroom?

11 A Audrina was crawling and she just, she was just
12 excited. She couldn't get there fast enough so my mom
13 tried to help her walk. And she was still so excited and
14 she wanted to crawl because she could get there faster.

15 Q And where were you during that time?

16 A I was in the bathroom doing the bath, throwing some
17 toys in the water.

18 Q Where was Owen?

19 A He was walking around me, he had followed me, he knew
20 that a bath was coming.

21 Q After your mother brought Victim to you where did
22 she go?

23 A She went to bed.

24 Q And you gave the children their baths that night?

25 A Yes.

1 Q When did Brandon get back to the home?

2 A I had just finished up with the baths and was putting
3 both of them in a towel and I heard him knock at the door
4 and it was Brandon.

5 Q Who dressed the children for bed?

6 A I brought the kids in their room and he walked in and
7 I just asked if he would help dress Owen just to get it
8 done quicker.

9 Q After, where did y'all dress them at?

10 A In the kids room.

11 Q And what did y'all do after you got them dressed for
12 bed?

13 A After we got them dressed for bed, they started
14 pulling out all of their toys so I sat in there and
15 Brandon was sitting in the floor and we just let them play
16 and we were listening to the radio and they were dancing.

17 Q Who?

18 A Owen and Victim .

19 Q And do you know how long you may have been in the
20 bedroom?

21 A We were in there for a good little bit, we were
22 having a good time.

23 Q And did y'all, what did you do then, did you put
24 Victim down then or what did y'all do?

25 A I believe at that point we went to the living room,

1 all of us. Owen, myself, Victim and Brandon went to the
2 living room to watch some TV.

3 Q And your mother and David were already in the
4 bedroom?

5 A Yes, they were asleep for the night.

6 Q And what were the children doing while they were in
7 the living room?

8 A They were playing together, I was holding Victim in
9 my lap and Owen was sitting beside me on my right side and
10 we were just watching TV.

11 Q Now, you mentioned a moment ago a radio and the kids
12 dancing, where was that at?

13 A In the kids room.

14 Q And why do you have a radio in there?

15 A Because Victim is a light sleeper and if you walk
16 through the kitchen area or anything like that she will
17 wake up, she will wake up and stand up in the crib. So, I
18 had the radio on like a low volume so that way it would
19 kind of tune out some of the outside noise.

20 Q And how often would you have it playing?

21 A Any time that they would nap or any time that she
22 would be in bed for the night.

23 Q You brought us to y'all being in the living room
24 together. How long were y'all in there together?

25 A Just for a little while, not a long time.

1 Q What did you do next?

2 A After that I took Victim in there to her room, she
3 was looking tired and just fussing a little bit so I went
4 in and took her in there and made her a bottle and put her
5 down for the night.

6 Q How was Victim at that time when you tried to put
7 her down?

8 A She was overall well, she looked tired, she looked
9 like she was ready for bed.

10 Q Was she fussy at that time?

11 A A little bit.

12 Q Did you give her a bottle before putting her down
13 that night?

14 A Yes.

15 Q Is that the usual practice?

16 A Yes. I never put her down without a bottle.

17 Q Okay. And you talk about putting her down with a
18 bottle, you had put her in the crib with a bottle?

19 A In the crib with a bottle.

20 Q And did you put her, at that time did you put Audrina
21 in the crib?

22 A I did.

23 Q And was there anybody in the children's room with you
24 at that time?

25 A Owen had walked in there with me, just following me

- 1 and just told him to be quiet so she could wind down.
- 2 Q What did, so you told him to be quiet?
- 3 A Right.
- 4 Q Where was Brandon during that time?
- 5 A He was in the living room.
- 6 Q Now, so you left Victim in the crib?
- 7 A Yes.
- 8 Q Where did you and Owen go from there?
- 9 A We walked back into the living room.
- 10 Q And was Brandon in the living room at that time?
- 11 A He was.
- 12 Q And where did y'all go from there?
- 13 A From there we just talked about going outside and
- 14 having a cigarette.
- 15 Q Who?
- 16 A Brandon and me.
- 17 Q And when you talk about going outside, where did
- 18 y'all go?
- 19 A We went out through the kitchen to sit out on the
- 20 little porch coming up there, we sat on the porch.
- 21 Q And who all went outside the kitchen door?
- 22 A On our way out I grabbed Owen and a jacket from my,
- 23 from the hamper, it was clean clothes. And I put that on
- 24 and we talked outside and Owen kind of walked around in
- 25 front of us and we smoked a cigarette.

1 Q And did you and Btandon talk about anybody or did he
2 express any concern at that time about anything?

3 A I just remember telling him that I was tired, that I
4 wasn't going to be good company that night. He told me,
5 he was telling me also that his grandmother was pretty
6 sick.

7 Q When he was talking to you about his grandmother
8 being sick what did you tell him to do?

9 A I just told him to go ahead and go home and be with
10 her.

11 Q And you had mentioned earlier, just a moment ago, you
12 told him you were not going to be good company, that you
13 were tired.

14 A Right.

15 Q What did you tell him to do?

16 A I told him to go ahead and go home.

17 Q What did you tell him about you going to bed?

18 A I told him I would be going to bed shortly, I was
19 really tired.

20 Q How long were y'all outside?

21 A Just long enough to smoke a cigarette.

22 Q What did y'all do when you came in?

23 A We came in and like instantly I heard Audrina calling
24 my name so I went in there and picked her up out of the
25 crib and we walked back to the living room.

1 Q How was Victim V acting at that time?

2 A She wasn't really tired, she didn't act like she was
3 really tired, she was fussy. To me it looked like she was
4 fighting sleep, like, you understand what I am saying.

5 Q Tell me again, slow down and tell me again?

6 A She was fighting sleep and I knew that she had teeth
7 coming in, she was fussy.

8 Q Was she, I mean who held her while she was in the
9 living room?

10 A I did.

11 Q Did she get down and play during that time or did you
12 just hold her?

13 A I just held her.

14 Q And how long did that take place?

15 A I don't know how long we were in there, it was for a
16 little bit longer. We were just sitting in there and I
17 was trying to help her wind down for the night.

18 Q Did you give her another bottle?

19 A No, she had the same bottle as before.

20 Q She had that same bottle?

21 A Yes, she hadn't really drank any of it.

22 Q And where did you go from there?

23 A We just sat in the living room for a little bit and
24 once I noticed--

25 Q --who was in the living room?

1 A Brandon, me, Owen and Victim.

2 Q And what did you do after sitting there for a little
3 while?

4 A After we sat there for a little while I thought I
5 would try again to get her to wind down and go to bed. I
6 thought about trying some Orajel and that is what I did, I
7 took her in there and gave her some Orajel.

8 Q Took her into where?

9 A Into her room.

10 Q And you did what?

11 A Put some Orajel on her gums and laid her down, this
12 time she laid down and I covered her up and gave her a
13 bottle.

14 Q Did you do anything to try to help her to go to
15 sleep?

16 A I did. I rubbed between her eyes and it helps, she
17 will close her eyes and she will start to fall asleep that
18 way.

19 Q When you left her in the crib that second time how
20 was your daughter?

21 A She was fine, she was okay.

22 Q And did you see any problems with anything about her?

23 A No.

24 Q Did she act anything but the fact that she was sleepy,
25 and had a long day?

1 A Other than the fact that she was sleepy and had a
2 long day, she was her normal self.

3 Q Did you see any injuries to her?

4 A No.

5 Q Was she crying?

6 A She was whining, kind of whimpering a little bit,
7 fighting sleep.

8 Q And the door to the bedroom of the children's room,
9 did you shut that door?

10 A It automatically, like the way it is made kind of
11 falls to the doorframe but I left it cracked.

12 Q After you got Victim down and you put Victim down
13 that second time where did you go from the children's
14 room?

15 A From there I walked back to the living room.

16 Q And had anybody else been in the children's room when
17 you put Victim down at that point?

18 A No.

19 Q When you got back to the living room what did you
20 dow?

21 A When I walked in Owen, like Brandon had Owen, he was
22 holding him up in the air like this and kind of playing
23 with him. And when he went to bring him back down Owen
24 elbowed him in the face so I walked into that.

25 Q And after Owen had elbowed Brandon what happened

1 after that?

2 A After that I just asked Owen, say you are sorry.

3 Q I am sorry?

4 A I asked Owen to say he was sorry. He just kind of
5 got quiet.

6 Q And how many times did you ask him to say he was
7 sorry to Brandon?

8 A Two to three times.

9 Q What was Brandon's reaction to all of this?

10 A He got angry, he said, Owen doesn't listen to me at
11 all. He said that I tell him things a hundred times and
12 he just doesn't respond. He said that Owen was spoiled.
13 And they basically walked all over me and I let them do
14 that.

15 Q And what was your response to Brandon telling you
16 your little boy was spoiled and that he didn't listen to
17 you?

18 A I told him that he wasn't a parent and he didn't know
19 anything about being a parent as far as I knew and he
20 wasn't going to tell me how to be a parent. And that he
21 was not to have any say in the discipline of my kids.

22 Q After that happened where did you go?

23 A After that I told Owen he needed to go brush his
24 teeth and get ready for bed so he headed towards that end
25 of the house.

1 THE COURT: Mr. Able, I apologize, the Court Reporter
2 and I at least need a very brief break. Let's take five
3 minutes. Ladies and gentlemen of the jury, we are going
4 to take a brief break, a five minute break. Don't discuss
5 the case and we will have you back in just a few minutes.

6 (Whereupon, the jury was excused from open court for
7 a break.)

8 THE COURT: We will take five minutes.

9 (Whereupon, a short break was taken.)

10 THE COURT: Let's bring the jury in, please.

11 (Whereupon, the jury came into open court at
12 approximately 4:10 p.m.)

13 THE COURT: Mr. Able, you may proceed, sir.

14 CONTINUE DIRECT EXAMINATION

15 By Mr. Able:

16 Q Ashley, you just got through saying how Mr. Lewis had
17 gotten mad and you had instructed him that he was not to
18 correct your children and he was not a parent of these
19 children. That was in the living room, correct?

20 A Yes.

21 Q Where did you and Owen go from there?

22 A We walked into my room, I was getting the bed ready
23 and everything.

24 Q And what did you ask Owen to do?

25 A I asked him to go brush his teeth.

1 Q And during that time you and Owen had gone back to
2 your bedroom. During that time where was Brandon?

3 A He followed us back there.

4 Q Okay. And I think I was getting ready to show you
5 this diagram. It has been marked State's exhibit number
6 44. Now, your room is here?

7 A Yes.

8 Q And that is where you and Owen went at that time?

9 A Yes.

10 Q And Victim was over here?

11 A Yes.

12 Q Now, where did you say Brandon went when you and Owen
13 went into your bedroom?

14 A Brandon followed us to my room and he laid on the
15 bed.

16 Q Now, how were you filling about this argument or
17 whatever you want to call it, this confrontation you had
18 about Owen saying you are sorry, how were you feeling
19 about that at the time?

20 A Just not happy with what he had said and I asked him
21 to leave the room because I was getting Owen ready for
22 bed.

23 Q And so you say you asked Owen to go brush his teeth?

24 A Yes.

25 Q And what did Owen do about that?

- 1 A He said no.
- 2 Q And what did you do at first about Owen not brushing
3 his teeth?
- 4 A Talked him into going in there, in the bathroom and
5 while he was sitting there and I was saying, I will brush
6 them, you know, and we were just going back and forth.
7 And eventually it just being in there for a little while
8 he just wouldn't brush his teeth so that is when I popped
9 him on the backside.
- 10 Q Now, after you brushed Owen's teeth what did you and
11 he do next?
- 12 A We went to my room.
- 13 Q For what purpose?
- 14 A To get ready for bed.
- 15 Q And where was Brandon when you brushed Owen's teeth?
- 16 A He wasn't in my room.
- 17 Q He wasn't in your room, he had left your room?
- 18 A Yes.
- 19 Q He wasn't in the bathroom?
- 20 A No.
- 21 Q Do you know where he had gone at that point?
- 22 A I assume the living room.
- 23 Q Did you say anything to Brandon after he left your
24 room at your request?
- 25 A No.

1 Q Now, you said you and Owen went back in your room and
2 did what?

3 A Just getting ready for bed and when I realized I
4 didn't have any books in there I went into Victim room
5 and he followed me and we got a couple of books.

6 Q You went back into the baby's room and got some
7 books?

8 A Yes.

9 Q What books did you get?

10 A The Cars, like animated book and an animal book.

11 Q Okay. Was Victim asleep at that time?

12 A No, she saw me come in and she looked, she like put
13 her head up and looked at me.

14 Q How was she doing at that time?

15 A She was good.

16 Q You notice anything wrong about her, any problems
17 with her physically or anything like that?

18 A No, she didn't have anything wrong with her.

19 Q Did you go in there and touch her or anything or have
20 any contact with her at that time?

21 A No, I just went in and tried to be as quiet as
22 possible to get the books out and she, you know, quiet,
23 she looked up at me. And me and Owen went back to my
24 room.

25 Q Okay. Was the door shut to the baby's room at that

1 time?

2 A No.

3 Q How long did you read to Owen?

4 A We read for a good while, read two books and one of
5 them was pretty long.

6 Q Okay. Did you say that the door was shut to the
7 children's room?

8 A It was cracked.

9 Q How big of a crack, do you know?

10 A This much, that is what the door did before, and if
11 you didn't pull it shut it would stay like this much open.

12 Q And the door to your bedroom was it cracked or was it
13 shut?

14 A It was open.

15 Q And when you were in the bedroom had you seen Brandon
16 again, when you and Owen went back into the bedroom to
17 read did you see Brandon again?

18 A No.

19 Q Do you know what time it was that you fell asleep?

20 A I don't know the exact time but I thought some time
21 after 10:30.

22 Q And Owen was still in the bed with you?

23 A He was.

24 Q Had he fallen asleep?

25 A He had fallen asleep and I had fallen asleep.

1 Q What was your usual practice when Owen would fall
2 asleep in your bed?

3 A I would read to him and then lay with him until he
4 fell asleep and then I would transfer him over to his bed
5 because I couldn't put them to bed together, they would
6 keep each other up.

7 Q What was different about this night, the night of
8 October the 12th?

9 A I was just so tired that I went to sleep.

10 Q So you never transferred Owen over to his bed?

11 A No.

12 Q Did you have a light on in your room?

13 A While I was reading to Owen I had like a bedside lamp
14 but when we finished our books I turned it out.

15 Q And the story books, what did you do with those?

16 A I dropped them in the floor.

17 Q What did you do with those books later?

18 A Later after Calvin Hill had issued, I guess where
19 Daniel would take care of Owen during this time I went
20 back to the house and Rita was there and Daniel was there
21 and I was there and my mom and I packed all of Owen's
22 stuff up and I remembered that Cars Book so I grabbed
23 those books and put in the bag that I packed for Owen.

24 Q So the books that had been in the bedroom with you
25 and Owen you packed for him to take with him?

1 A Yes.

2 Q Before you fell asleep did you have another
3 opportunity to check on Victim ?

4 A No.

5 Q Could you hear anything before you fell asleep in
6 Victim room?

7 A While I was reading to Owen it started out she was
8 kind of whining, just like whining, just fighting sleep is
9 what I thought. And as I started reading to Owen she
10 quieted down.

11 Q Did you hear anything after that?

12 A No, she got quiet.

13 Q After you fell asleep did you hear anything from her?

14 A No.

15 Q What is the next thing you remember that night?

16 A I was laying in the bed asleep and Brandon came in
17 and he liked tapped me on the shoulder, something like
18 that and he said, do you want some of this food that my
19 grandma made. And do you want to watch this movie with
20 me. And I told him, no, I am too tired.

21 Q And what did you do?

22 A I turned over and went back to sleep.

23 Q And Brandon came into the room?

24 A He came into the room.

25 Q Okay. And asked you these things?

1 A Yes.

2 Q And what did Brandon do after you told him, no, you
3 were too tired, you wanted to go back to sleep?

4 A He left the room.

5 Q Did you get up any time during that night before
6 Victim was found?

7 A No.

8 Q What happened next?

9 A The next thing I remember is Brandon in front of me
10 with Victim in his arms.

11 Q Where were you when Brandon woke you up?

12 A In bed.

13 Q In your room?

14 A In my room.

15 Q Over here?

16 A Yes.

17 Q And who was in bed with you?

18 A Owen.

19 Q He had stayed in bed with you?

20 A Right.

21 Q And what was Brandon saying to you at that time when
22 he woke you up the second time?

23 A Said she is not acting right.

24 Q Who?

25 A Victim is not acting right, Brandon said Victim is

1 not acting right.

2 Q And what else did he say?

3 A At that point I was trying to wake up and walked out
4 in the hallway and he, and I just went to like pick her
5 up, like straight up like I would normally and her head
6 fell back and she was limp.

7 Q How was Brandon acting?

8 A Just odd, really calm and he seemed kind of
9 collected.

10 Q And where did you take Victim from Brandon?

11 A When I realized her head fell back I put her into
12 like a cradle position and I realized she wasn't looking
13 at me, she was looking just out, her eyes weren't focusing
14 out. And at that point it hit me, you know, she is like
15 not responsive, she is not looking at me and I panicked.
16 You know, I looked at her and I was like, I held her up
17 and I was like, Victim wake up, wake up. Like I didn't
18 know why she is not waking up.

19 Q Did your baby ever wake up?

20 A She never woke up.

21 Q Do you need a few minutes, are you okay.

22 (Whereupon, witness is crying.)

23 Q Ashley, in what room were you when Brandon brought
24 Victim to you?

25 A I was in my room.

1 Q And where and what room were you when you took
2 Victim from him?.

3 A The hallway.

4 Q In the hallway and you say at that time when you went
5 to pick her up her head fell back?

6 A Yes.

7 Q How did you react when your baby's head fell back?

8 A I didn't know what to do, I didn't know what was
9 going on. So I screamed for her to wake up like I
10 screamed her name and three or four times and she wouldn't
11 wake up. So, from there Brandon was telling me, I think
12 she had a seizure, I think that or he said he found her in
13 the crib with her head like smushed like up against the
14 side and she was laying horizontal. And from there I
15 just, I just like screamed and took her into the living
16 room and I screamed for my mom to wake up.

17 Q While he was providing these explanations about he
18 thought she had a seizure and this is how he found her,
19 how were you processing this information?

20 A I really wasn't listening, I mean I didn't ask for
21 the information. I just was kind of like, I didn't know
22 what to do. I mean, I have got her in my arms and she is
23 lifeless and he is telling me he thinks she has had a
24 seizure. I mean, I just ran to the living room screaming,
25 I wanted, you know, I couldn't figure out what was wrong

1 with her. I never seen her act like that.

2 Q Did he try to explain to you why he thought she had
3 had a seizure?

4 A He said that she had blood on her mouth. And he had
5 had a seizure before and that happened to him.

6 Q How were you processing this, did you ask him for
7 that explanation?

8 A No, I never asked him for an explanation.

9 Q You said you saw blood on her face or did he tell you
10 that?

11 A He told me there was blood on her face.

12 Q Did you notice anything about her face?

13 A Just that she wasn't looking at me and that she was
14 limp. Other than that, I mean, no.

15 Q What did you do when you did take her from him, what
16 did you do at that point?

17 A After, I couldn't get her to wake up. I ran in the
18 living room and screamed for my mom.

19 Q What did you do to try to wake her up, when you were
20 standing there holding her what were you doing?

21 A The first thing that I thought of was just to like
22 call out her name because usually she is the one, you
23 know, calling my name. I just called out her name and she
24 wouldn't wake up. I said Audrina, Audrina, wake up and
25 she just didn't hear anything. She just laid there and

1 she couldn't look at me.

2 Q When you got her into the living room who came out of
3 their bedroom?

4 A My mom came out and just kind of hit the floor on her
5 knees and she tried to breathe for her. I was like, mama,
6 I don't know what is wrong with her, I don't know what is
7 wrong with her. And she listened to her and she said, she
8 is not breathing very well. She tried breathing for her
9 and both of us realized she is not breathing very well and
10 I yelled call 911.

11 Q How was Brandon acting during this time, where was
12 he?

13 A I glanced up one time and he was in the living room
14 kind of pacing.

15 Q Did he say anything?

16 A He mentioned at one point that we should just go
17 ahead and drive her to the hospital.

18 Q And what was your response to that?

19 A Just that, it wouldn't be quick enough. I knew that
20 EMS would be quicker in any way.

21 Q And how long was it before the ambulance got there?

22 A Like ten to fifteen minutes or so.

23 Q And what did y'all do while y'all were waiting on the
24 ambulance to get there.

25 A My mom and me were kind of like, we were real close

1 with her and my mom was holding her and I was kind of
2 cuddled into her and we were just crying over her trying
3 to think of anything that could be wrong with her.

4 Q Were you able to ever get her to wake up again?

5 A No.

6 Q When EMS got there what did they do?

7 A They took her and laid her down on the floor like
8 immediately and were talking about her, like her throat or
9 something was swollen. We told them that she was having
10 trouble breathing, we didn't think she was breathing
11 right. And David told them about her pupils and from
12 there they kind of took her to the vehicle.

13 Q Where did you go, when they took Victim out to the
14 ambulance where did you go?

15 A I ran to Owen's room and went to pick him up and went
16 to run out the door with him and my mom stopped me, she
17 was like don't take him with you in there. So, I was like
18 okay. It was just like a reflex thing, I was just taking
19 him with me where I went. And she stopped me and told me
20 that she would just follow behind. So I ran out the door.

21 Q So, after you gave Owen to your mother you ran out,
22 where did you go to?

23 A I ran straight out, like the kitchen door and when I
24 got out there the EMS vehicle was all loaded up and a guy
25 from the fire department came up and said you can ride

1 with me, they are loaded up and ready to go.

2 Q Was this an emergency vehicle as well?

3 A Yes, he said he was following EMS.

4 Q Do you know who that was?

5 A I think it was, I don't know his name, he was a
6 partner of one of the EMS guys.

7 Q When you ran out of the house that night how were you
8 dressed?

9 A In a t-shirt and some leggings and nothing else.

10 Q What kind of shoes did you have on?

11 A No shoes, no socks, no coat.

12 Q Up to that point what was your reaction of all of
13 this, how were you acting?

14 A I mean, I didn't know what was wrong. The only, the
15 whole time I was thinking that she was a primy, what could
16 have happened. Was she, Brandon said he found her on her
17 stomach, maybe she couldn't breathe right that way, I mean
18 I didn't know.

19 Q Who else rode with you to the hospital?

20 A Brandon squeezed in and we sat in the front seat
21 together. He followed me to the vehicle.

22 Q Was he saying anything during the ride?

23 A During the ride like I was crying and I just kept
24 saying, what is wrong with her, what is wrong with her.

25 And he didn't really say anything for a while and then he

1 patted me on the back like two times and he said that
2 everything was going to be okay. And I just remember that
3 because it stood out so I was like, how does he know.

4 Q What did you do once you got to the hospital?

5 A Once we got to the hospital I ran inside and I asked,
6 I was like where is my baby, Victim Hepburn. And we get
7 in there and I am crying and they moved me over to a
8 family room because they didn't want me to upset everybody
9 else.

10 Q And who was there at the hospital at that time?

11 A Me and Brandon were in the room and just by ourselves
12 and like a minute or two later the Chaplain came in.

13 Q Mr. Brown who testified last week?

14 A Yes.

15 Q And what did Brandon tell Mr. Brown?

16 A He talked about with Mr. Brown how he found Victim,
17 like how she was positioned in the crib. And I am pretty
18 sure he mentioned something about he thought she had a
19 seizure.

20 Q Who did Brandon tell Mr. Brown was up that night?

21 A He said that he was up and he found Victim.

22 Q And who did Brandon tell Mr. Brown had gone to bed
23 and gone to sleep?

24 A He said that I had gone to bed.

25 Q What did Brandon tell Mr. Brown about Victim

1 feelings for him or how she liked him?

2 A He told him that Audrina didn't like him but he loved
3 her.

4 Q And what was Brandon's appearance during the time
5 y'all were talking with the Chaplain?

6 A Well, he was sitting to my left and I looked over at
7 him just while he was talking and he had, he was kind of
8 sitting kind of tense with his head down and he was
9 sitting kind of like this. And his face was really,
10 really red and he never really looked up.

11 Q Did you talk to anybody else that night at the
12 hospital?

13 A I talked to the doctor that was on duty, the ER
14 doctor.

15 Q Is that Dr. Curry?

16 A Yes, sir.

17 Q And who did you talk to, who was present when you
18 talked to her?

19 A Just me and my mom.

20 Q And what did you tell her?

21 A Well she explained to me that Victim had been
22 involved in a non-accidental trauma. And I just kind of
23 stood there and I was like, what do you mean, what does
24 that mean, what are you saying. I just kept asking her
25 questions and my mom kind of did the same thing. We

1 didn't know what that meant and we couldn't really process
2 it.

3 Q What was your reaction of being told that your child
4 had been subjected to non-accidental trauma?

5 A Just shocked. Like from there I was just shocked,
6 like couldn't mentally understand.

7 Q Did you talk to anybody else at Self Memorial?

8 A After that I think Investigator Plaxico met me on my
9 way out of that room.

10 Q Did you have a chance to talk to him?

11 A I did.

12 Q And what did you tell him that night?

13 A I told him that I went to bed that night sometime
14 after 10:30 and that Brandon found her and brought her to
15 me unresponsive.

16 Q Now, how long were y'all at Self Regional?

17 A She wasn't there long, they sent her to Greenville
18 like right away, as soon as they could get her out of
19 there. So, thirty minutes or a little bit longer maybe, I
20 don't remember being there long.

21 Q Now, when Audrina was transferred where did you go?

22 A After she was transferred I, my mom, Daniel and I
23 went by my house so I could get some socks and shoes and
24 coat.

25 Q Who was riding in the car?

1 A Me, my mom and Daniel, their father.

2 Q Where was Brandon at that time?

3 A The police officers had taken him into the police
4 department to talk to him.

5 Q What did you do when you got home?

6 A When I got home I just went in and put some pants on,
7 socks and shoes and grabbed a jacket.

8 Q Now, did you notice anything unusual when you got
9 back to the house?

10 A When I was walking out of my room, like I just
11 glanced into Audrina's room and I noticed that there was a
12 full bottle sitting outside her crib, just sitting on a
13 dresser by her crib.

14 Q Let me show you what has been marked as State's
15 exhibit number 38. Tell me if you recognize that?

16 A Yes. That is the bottle from lunch time that day.

17 Q Whose room is that?

18 A That is my room.

19 Q And why would Victim bottle be sitting in your
20 room?

21 A Because, sometimes I fed her in there, I mean we were
22 all over the house during the day.

23 Q And so that bottle would have been from when that
24 day?

25 A From lunch time that day.

1 Q What were you saying about the bottle, what was it
2 that you noticed about the bottle?

3 A When I was walking out of my room I just glanced into
4 her room just by force of habit and whenever I saw, like I
5 looked in and directly I could see a full bottle sitting
6 on the dresser by the crib.

7 Q Ms. Hepburn, I want to show you pictures that have
8 been submitted, pictures of the baby's room. State's
9 exhibit number 39 and State's exhibit number 35. Can you
10 see where you would have seen that bottle when you looked
11 back in the room?

12 A In this photo if you look straight in the room the
13 dresser would have been on that wall to the left of the
14 crib.

15 Q So is it represented in either one of these
16 photographs?

17 A No, it is not. Well, this one you see a small image
18 of that dresser but is, you cannot see the bottle because
19 it would have been to the right.

20 Q So, do either one of these photos represent where you
21 saw the bottle that morning, October 13th, 2009?

22 A No, they do not.

23 Q Okay. And this is State's exhibit number 34. Do you
24 recognize that?

25 A Yes, that is Victim crib.

1 Q And do you see her bottle in there?

2 A No.

3 Q After you got dressed that morning where did you go
4 from there?

5 A After I got dressed we left and I rode with my mom
6 and Daniel to go up to Greenville Memorial Hospital.

7 Q Going back to this bottle, **Victim**, what was her
8 usual thing that she would do if she finished a bottle.
9 What would she do?

10 A When she would finish a bottle she would throw it out
11 of the crib in the floor.

12 Q Was it something that she could have done to sit the
13 bottle up on the dresser?

14 A No.

15 Q So you went from there to Greenville?

16 A Yes.

17 Q And who went from your home where you lived with your
18 mother back to, I mean up to Greenville?

19 A Me, my mom and Daniel.

20 Q And who did you talk to in Greenville?

21 A In Greenville, as soon as we got there we walked up
22 to the family room and I believe initially we talked to
23 Dr. Seigler.

24 Q The doctor that testified last week?

25 A Yes.

1 Q A PICU pediatrician, I believe?

2 A Yes.

3 Q And did you talk to anybody else that morning?

4 A I talked to another doctor, Calvin Hill.

5 Q Would that have been Dr. Croswell, Mary-Fran

6 Croswell, a lady doctor?

7 A Yes, sir.

8 Q Did Croswell testify last week?

9 A Yes.

10 Q And what did you tell her?

11 A I told her the same thing I told Investigator
12 Plaxico, that I went to sleep that night and Brandon
13 brought Victim to me unresponsive.

14 Q And what time would it have been that you would have
15 been talking to Dr. Croswell?

16 A I am not sure on that exact time.

17 Q Was it daylight yet or was it still dark outside?

18 A It was daylight.

19 Q It would have been morning hours?

20 A It may have been, I talked to a lot of people so I
21 don't know the exact time.

22 Q Did you, after you left Self Memorial did you have
23 any further contact with Richard Brandon Lewis?

24 A No.

25 Q Since you were at Self Memorial Hospital on October

1 13th of 2009 have you had any further contact with Richard
2 Brandon Lewis?

3 A No.

4 Q You say you talked to Calvin Hill up at the hospital?

5 A Yes.

6 Q And what did you tell him?

7 A I told him the same thing, I told him that I went to
8 bed that night, told them that into the night that Brandon
9 had woke me up with Victim unresponsive.

10 Q Now, how long were you at Greenville Memorial that
11 morning, that day?

12 A Sometime around 2:00 or 3:00 or so I was asked to
13 come down to the station so I just remember leaving around
14 about that time.

15 Q And who asked you to do that?

16 A Lieutenant Plaxico.

17 Q And who did you meet with at Laurens County Sheriffs
18 Office?

19 A When I got there I am not sure of the names of the
20 two men that met me at a desk at the office.

21 Q And would that have been Officer Franklin that spoke,
22 that testified the other day?

23 A Yes.

24 Q And who did you meet after that?

25 A The two of them talked to me together, Officer

1 Franklin and there is one more, I can't remember his name.

2 Q Okay. Who did you talk to after that?

3 A After that the SLED agents.

4 Q Ms. Kirkland here?

5 A Yes.

6 Q And who, it was her and another lady?

7 A It was her and one more lady, yes.

8 Q And you heard her testimony last week about what you
9 explained to them that happened that night?

10 A Yes.

11 Q Now, who else did they question about who possibly
12 could have done this?

13 A They questioned my mom, David, Daniel--

14 Q I am not saying who did they talk to, I am saying who
15 did they ask you about?

16 A They asked about me if it was possible that my mom
17 could have done this, they asked me if it was possible if
18 David Crumley could have done it and they asked me if it
19 is possible that Daniel could have done it, their father.
20 They asked me about all of them.

21 Q And what was your response to them when they asked
22 you about that?

23 A My response was no to all of them. No to all of
24 them.

25 Q The officer testified that there was something you

1 had said about, you didn't put it past their father or
2 something like that. What did you tell them?

3 A With everybody that we went over, my mom, David,
4 Daniel, they asked me information on each person. Like
5 they asked me why could I rule David Crumley out, why
6 could I rule my mom out, why could I rule Daniel out. And
7 they were just asking me about Daniel and I, like our
8 relationship. They were asking me had we ever had a bad
9 argument, things like that. And the same thing with my
10 mom. And with Daniel we talked about our relationship and
11 how we were both kind of resentful towards one another and
12 that kind of thing.

13 Q Resentful about what?

14 A The fact that we were going through a possible
15 separation that would ultimately lead to a divorce.

16 Q Now, who else did you talk to that morning or that
17 day?

18 A Towards the end I talked to Lieutenant Plaxico.

19 Q And did you tell him what happened that night?

20 A I did.

21 Q And did he ask you if you had hurt your baby?

22 A He did.

23 Q And what did you tell him?

24 A I told him, no, I would never hurt my baby
25 repeatedly. I told him hundreds of times.

1 Q How long were you at the sheriffs office?

2 A At least five hours.

3 Q And how long had you been up?

4 A Since the night, I guess, the night of the 12th,
5 leading up to the 12th I didn't sleep at all. The only
6 sleep that I got was a nap that I had with the kids that
7 day. And then the sleep, the hour or so to sleep that I
8 got when I fell asleep with Owen.

9 Q Where did you go after the sheriffs office?

10 A After the sheriffs office it was like 8:00 or 9:00
11 p.m. at night and after that I went, David Crumley and my
12 sister brought me to the station and they dropped David
13 off at home, she drove and then took me back up to
14 Greenville where my dad lives.

15 Q And when did you next go back to the hospital?

16 A Actually, I believe I tried to go to the hospital
17 that night but they had, they put, I don't know what it is
18 they called but they told me I couldn't see **Victim** in the
19 room.

20 Q Okay.

21 A DSS had an order.

22 Q When was it that you had testified to earlier about
23 going back home and packing some stuff for Owen?

24 A Whenever I was at the hospital Calvin Hill talked to
25 me about who I would want to keep Owen and I agreed on

1 Daniel keeping Owen. And then anyways his legal father
2 was going to be able to do that. And once I found that I
3 knew he needed clothes, things like that. So that is when
4 I went home, packed up his stuff and so he would have
5 things there with his dad.

6 Q Was that when you picked the books up that were in
7 the bedroom?

8 A Yes.

9 Q And tell me again, when was that?

10 A I am not sure, I don't think it was the same day, I
11 think it was the following day.

12 Q Now, prior to Audrina's injuries you had made a video
13 of her a couple of days before?

14 A Yes.

15 Q How many days before these injuries on the 13th was
16 this video made?

17 A Two.

18 Q And what does it show with her?

19 A It is just a little clip, I wanted to film her
20 walking.

21 Q And I think you prepared a video of some photographs
22 of Audrina and the family and things of that nature,
23 correct?

24 A Yes.

25 Q All right. Who prepared that?

1 A Myself and my pastor's daughter.

2 MR. ABLE: Your Honor, we would move to submit into
3 evidence the video that has been prepared by Ms. Hepburn
4 and have the jury to review the same. It has been
5 provided to the State.

6 THE COURT: The State's position?

7 MS. MAYES: Yes sir, Your Honor. The State objects
8 pursuant to 403 to any portion which are not within the
9 indictment timeframe.

10 THE COURT: You have a position, Mr. Wise?

11 MR. WISE: I don't have a position.

12 THE COURT: State's objection is overruled. I will,
13 I have not had an opportunity to view this video, are we
14 comfortable going forward. Ms. Mayes, have you reviewed
15 it?

16 MS. MAYES: We have, Your Honor, we also have an
17 objection to sound.

18 THE COURT: We don't need any sound on the video.

19 MR. ABLE: Yes sir. Does the Court wish to review it
20 before--

21 THE COURT: How long is the video?

22 MR. ABLE: Judge, as I can remember fifteen minutes.

23 THE COURT: It is portions primarily of the child
24 walking?

25 MR. ABLE: Well, no sir, the first part of it, we

1 might want to take this up outside the jury.

2 THE COURT: Ladies and gentlemen of the jury, we are
3 going to take a brief break. I hope to have you back in
4 here in five minutes. Don't talk about the case.

5 (Whereupon, the jury was excused from open court.)

6 THE COURT: The jury is out. It should be noted that
7 I was alerted to this video in chambers or this coupage,
8 some are stills, and some are video?

9 MR. ABLE: The portion she describes in the first ten
10 or fifteen seconds are two days prior to the child's
11 injuries. And then the rest is a collage or coupage,
12 whatever you want to call it with some video in between
13 it. The State has reviewed it and it is just a biography,
14 a picture biography of the child's life.

15 THE COURT: Was it arranged chronologically or do you
16 know?

17 MR. ABLE: It appears that way, yes sir.

18 THE COURT: How many photos are we talking about, the
19 stills...

20 MR. ABLE: I couldn't begin to tell you, Judge,
21 one-hundred.

22 THE COURT: About one-hundred?

23 MR. ABLE: Yes.

24 THE COURT: And the purposes that you are offering
25 this is to address the development issues that the child

1 had, the issues that were brought up due to the premature
2 birth, things like that?

3 MR. ABLE: To show a healthy child, no previous
4 injuries, developmentally normal.

5 THE COURT: I will allow it in full. We won't allow
6 the audio but I will allow it in full. We are getting on
7 towards 5:00 o'clock. I would certainly want to finish at
8 least direct. I anticipate your cross is going to take
9 thirty minutes to an hour?

10 MS. MAYES: Yes sir, Your Honor.

11 THE COURT: Mr. Wise's cross is going to take thirty
12 minutes to an hour. We will take five quick ones and then
13 push it forward.

14 (Whereupon, a short break was taken.)

15 THE COURT: Let me see counsel over here to the side.

16 (Whereupon, a bench conference was held with the
17 attorneys.)

18 THE COURT: Are you going to introduce this?

19 MR. ABLE: Yes, sir.

20 (Whereupon, Defendant's Exhibit 1 was admitted into
21 evidence.)

22 THE COURT: Let me see counsel over here to the side.

23 (Whereupon, a bench conference was held with the
24 attorneys.)

25 THE COURT: Bring the jury in, please.

1 (Whereupon, the jury came into open court at
2 approximately 5:00 p.m.)

3 THE COURT: Ladies and gentlemen of the jury, we are
4 about to review an exhibit that has been offered by Ms.
5 Hepburn and the defense. It has been received into
6 evidence. You may play the video, Mr. Able or Solicitor.

7 (Whereupon, a video was played for the jury starting
8 at 5:02 p.m.)

9 Mr. Hammack: The computer is locking up and I will
10 bring another in. It will be faster to do that.

11 THE COURT: Very well, go ahead.

12 (Whereupon, a computer problem with the video at 5:12
13 p.m. Another computer brought into the courtroom.
14 Continued playing the video at 5:15 p.m. and video
15 ended at 5:25 p.m.)

16 THE COURT: Thank you, Mr. Hammack. Mr. Able.

17 CONTINUE DIRECT EXAMINATION

18 By Mr. Able:

19 Q Ashley, how much joy did Victim bring to your life?

20 A So much.

21 Q How much joy do your children bring to your life?

22 A So much.

23 Q That is State's exhibit 26, did you do that to your
24 little girl?

25 A No.

1 Q State's exhibit number 27, did you do that to your
2 little girl?

3 A No.

4 Q State's exhibit number 7 and number 4, did you do
5 that to that child?

6 A No.

7 Q Where were you in the early morning hours of October
8 13th of 2009 when that was done to your daughter?

9 A I was asleep.

10 Q Where?

11 A In my bed, in my room.

12 Q Who was the only person awake in that house when that
13 happened to your daughter?

14 A Brandon Lewis was the only person awake at the time.

15 Q Who brought your daughter to you in that condition?

16 A Brandon Lewis.

17 Q And in what condition was your daughter when you laid
18 her down that night and you went to sleep?

19 A She was lifeless.

20 Q I am saying how was she when you laid her down that
21 night?

22 A When I laid her down that night she was her normal
23 self.

24 Q And when was she lifeless?

25 A When he brought her to me.

1 Q Did you do anything to harm Victim that night?

2 A No, I would never do anything to harm Audrina, ever.

3 Q Who was the only person that could have done that to
4 her?

5 A Brandon Lewis.

6 Q That is all I have of this witness.

7 THE COURT: Thank you, ma'am, you can step down.

8 Ladies and gentlemen of the jury, due to the lateness of
9 the hour we are going to go ahead and break for the
10 evening. I will remind you you are not to discuss this
11 case with anyone tonight. Obviously it is a little
12 peculiar to break in the middle of the witness. Obviously
13 you are prohibited in viewing anything or listening to
14 anything on the radio or the newspaper, any news reports
15 about this. You certainly can't discuss this case with
16 anyone, you have not heard all the evidence. As a matter
17 of fact you have not heard the cross of this particular
18 witness and certainly have not received the remainder of
19 the evidence in this case and you haven't heard my charge
20 on the law therefore it is imperative that you not
21 consider any issue in this case until it is time to start
22 deliberating. With that I trust that you will have a good
23 evening. I would ask you to be back in the jury room
24 tomorrow morning at 9:00 o'clock and we will resume with
25 the trial of this case. Have a pleasant evening.

1 (Whereupon, the jury was excused from open court for
2 the day.)

3 THE COURT: Anything before we break for the evening.

4 MR. WISE: For planning purposes, I am looking based
5 on what everybody has represented, if she has no reply I
6 can imagine about 3:00 or 3:30 tomorrow, I assume you are
7 not going to want to argue and charge that late?

8 THE COURT: If we were to finish with testimony
9 tomorrow at the very least, I am not going to make y'all
10 argue until you have had a chance to look at what I am
11 going to charge. I will hopefully get that email to you
12 if not today tomorrow.

13 MR. WISE: There is some other stuff I need to do
14 tonight to get ready for tomorrow. The request to charge,
15 I probably won't get that to you until Tuesday night.

16 THE COURT: That is fine. Have a good evening.

17 (Whereupon, the trial will resume the next morning at
18 9:00 a.m.)

19 THE COURT: Let's have the jury in, please. Ms.
20 Hepburn, you can come on to the witness stand.

21 (Whereupon, the jury came into open court at
22 approximately 9:11 a.m.)

23 THE COURT: The record should reflect that the jury
24 is back. Ladies and gentlemen, hope you had a pleasant
25 evening. We will continue with the testimony. Ms. Mayes,

1 cross-examination.

2 CROSS-EXAMINATION.

3 By Ms. Mayes:

4 Q Ms. Hepburn, on the day in question I want to start
5 with the morning of October 12th. I believe your
6 testimony previously was that you woke up that morning and
7 you fed the kids cereal, correct?

8 A Correct.

9 Q And you were the only one with them once your mom and
10 David Crumley had gone to work in Newberry, correct?

11 A Correct.

12 Q And that day is pretty much like every other day,
13 they are in your care and as you termed in your direct
14 examination, 24/7?

15 A Correct.

16 Q And by that what you mean is that you are the one who
17 routinely gives them a bath?

18 A Correct.

19 Q And changes their clothes?

20 A Correct.

21 Q And feeds them?

22 A Correct.

23 Q When Audrina was first injured and EMS arrived at the
24 home what did you see?

25 A What do you mean?

- 1 Q What did they do?
- 2 A What did they do with her?
- 3 Q Yes.
- 4 A They laid her down and tried to treat her.
- 5 Q Were you there when they cut her onesie off?
- 6 A No.
- 7 Q Let's talk a little bit about that. Your testimony
- 8 was that you were in your room asleep?
- 9 A Yes.
- 10 Q And Brandon Lewis enters the room with your daughter?
- 11 A Yes.
- 12 Q And then where did you go next?
- 13 A Once he entered the room with **Victim** and I took her
- 14 from him I went out to the hallway.
- 15 Q And did what?
- 16 A And the light was on and I wanted to see why she was
- 17 limp.
- 18 Q And what did you see?
- 19 A I saw that she was limp and that she couldn't look at
- 20 me and she wasn't reacting to me calling her name.
- 21 Q And what did you do next?
- 22 A After I realized that she wasn't reacting to me and
- 23 she, when I called her name she wasn't responding and that
- 24 her eyes were not looking at me, at that point I ran to
- 25 the living room screaming for my mom to wake up.

1 Q Did you ever enter the bathroom?

2 A No, I did not.

3 Q Did you ever enter Audrina's room?

4 A After I woke up?

5 Q Yes.

6 A No.

7 Q When is the last time you saw your daughter moving
8 her head?

9 A The last time I saw her moving her head was when I
10 went to get the book or books out of the room to read to
11 Owen.

12 Q Let's talk about that. I believe your testimony on
13 direct examination was that you last saw your daughter
14 when you went to her room to get some books for Owen, that
15 was some time after 10:00 o'clock, correct?

16 A Correct..

17 Q And you state that when you entered her room you
18 could see her moving her head around?

19 A Yes, I saw her look up at me.

20 Q And you are sure you saw that?

21 A I am sure.

22 Q Why is it, Ms. Hepburn, that you never mentioned that
23 to any of the medical personnel who were asking you about
24 your daughter's condition?

25 A Because I didn't, at the time it just, I just didn't

1 remember it.

2 Q You didn't remember the last time you had seen your
3 daughter healthy?

4 A I just didn't remember the fact that I went in there
5 and got books for me and Owen, like I had forgot that I
6 had to go in there and get books.

7 Q So you forgot about that when medical personnel were
8 asking you about your daughter's condition?

9 A I did.

10 Q And they had been asking you how she was throughout
11 the night, correct?

12 A Correct.

13 Q And they had been asking about the sequence of events
14 that night, correct?

15 A Correct.

16 Q And when you spoke with them you talked about putting
17 her to bed around 9:00, 9:30, 10:00, 10:30, correct?

18 A Correct.

19 Q And you spoke about at one point having to go in and
20 give her a bottle?

21 A Whenever I had given her a bottle I had brought her
22 in there.

23 Q Okay. So you took her from her room and brought her
24 into the den for the bottle?

25 A Brought her in from the den to her room, yes.

1 Q Okay. And you also spoke about the fact that at some
2 point later in the night you had got up out of your bed to
3 go in her room to give her Orajel, correct?

4 A I didn't get up out of my bed to give her Orajel, no.

5 Q Where were you at?

6 A In the living room and she would have been with me.

7 Q You didn't get her out of her room to give her the
8 Orajel?

9 A No, we were in the living room and I took her to her
10 room and gave her Orajel and a bottle.

11 Q So you gave her the Orajel in her room?

12 A In her room, yes.

13 Q And when you spoke with Dr. Crosswell you mentioned
14 giving her the Orajel as the last time you had seen her?

15 A Yes.

16 Q And that is because you forgot to tell Dr. Crosswell
17 about the time you went in at the end for the book and you
18 had seen her healthy and looking at you?

19 A I did, I forgot about that.

20 Q Now, I believe your testimony on direct examination
21 was that when you had the fight with Daniel Hepburn, that
22 the reason that you punched him was because you were upset
23 and intoxicated, correct? Isn't that what you said, that
24 you were upset and intoxicated?

25 A We were both intoxicated and arguing.

1 Q And that you said you did that out of a reaction?

2 A Yes.

3 Q And so your first reaction was not to slap him or
4 push him but it was to punch him in the face, correct?

5 A No, we had been arguing.

6 Q But you didn't slap, you threw a punch, correct?

7 A It was more of a slap.

8 Q A slap that gave him a black eye?

9 A From, I was sitting in the backseat.

10 Q You recognize this photograph, don't you?

11 A I don't know if I have seen it before but that is
12 Daniel.

13 Q That is Daniel and that is his eye after your
14 argument with him, correct?

15 A I can't say that that is his eye after the argument.

16 Q You don't deny that you gave him a black eye?

17 A No, I do not.

18 Q Would you agree that you have a temper, a quick
19 temper?

20 A No.

21 Q I believe you were talking about the visitation that
22 you have had with Daniel after all of these events. The
23 agreement that you worked out with Daniel to see Owen.
24 That agreement is on the condition that you always have
25 supervised visitation, correct?

1 A Correct.

2 Q So you are not allowed to be alone with Owen, are
3 you?

4 A No.

5 Q I want to ask you a little bit about the marks that
6 were on your daughter's neck on September 17th. You have
7 seen these photographs before, haven't you?

8 A I have.

9 Q I believe your testimony on direct examination is
10 that you already had the well baby visits scheduled?

11 A Correct.

12 Q And after scheduling the visit you noticed marks on
13 her neck the day before, correct?

14 A Correct.

15 Q And when you got in there for the exam she also had a
16 rash on her stomach?

17 A On the chest area, yes.

18 Q And you pointed that rash out to the nurse and then
19 she said, well, take a look at what is on her neck. And
20 she showed you the difference between the two types of
21 marks, didn't she?

22 A I thought they were very similar, I asked her or I
23 showed her the rash.

24 Q And she showed you the difference between them,
25 didn't she?

1 A She told me one was petechial and one looked more
2 viral.

3 Q Okay. So the one that she mentioned is petechial is
4 the marks on the neck, correct?

5 A Correct.

6 Q And the one she mentioned being viral were the marks
7 on the stomach, right?

8 A Correct.

9 Q And do you recall seeing her take her two fingers and
10 hold them down on the rash to see how that disappeared,
11 when she held her finger down and then removed her
12 fingers?

13 A I don't recall her doing that, no.

14 Q You don't recall her showing you the difference?

15 A Just showing me the difference in coloration but not
16 with the finger.

17 Q Okay. Now, did you discuss those neck marks with
18 Brandon Lewis?

19 A I probably did at some point.

20 Q What did he say?

21 A I just discussed that I took her to the doctor about
22 those marks, I don't recall him saying anything about it.

23 Q Now, I believe your testimony on direct examination
24 was that when the Hepburn family questioned you about how
25 **Victim** had chipped her tooth your testimony was that you

1 thought you told them about the fall that you mentioned
2 occurred in your back yard at your grandmama's place?

3 A I knew that she had hit her mouth but most of the
4 conversation was about the dentist.

5 Q Do you recall being at the Hepburn home and Daniel
6 being present and Victim grandmother, Rita, being
7 present as well as Daniel's three sisters, Brittany, Sara
8 and Emily and they asked you about the chipped tooth and
9 you didn't mention anything about the incident at your
10 grandmama's house?

11 A I was there a lot with them together, I don't recall
12 that specific event.

13 Q But you don't deny having a conversation about the
14 chipped tooth and you never mentioned that, according to
15 your grandmother she had fallen on the ground?

16 A I don't deny that we had some sort of conversation
17 about the chipped tooth. But as far as how far the
18 conversation went, I don't recall.

19 Q Okay. Now, when you spoke with Calvin Hill from the
20 Department of Social Services about that neck mark, at the
21 time you termed that neck mark broken capillaires, didn't
22 you?

23 A Yes, I did.

24 Q And that is because at some point and time when you
25 took her to the Children's Center for her subsequent

1 visits you were informed that it wasn't, in fact,
2 meningitis related or viral related. You were informed
3 that it was in fact broken capillaries, correct?

4 A They told me that they thought it was, they were
5 explaining to me what petechia was and that was broken
6 capillaires.

7 Q Now, on the day that this happened, earlier in the
8 day. I believe your testimony was that Brandon had come
9 over, correct?

10 A That was afternoon.

11 Q When your mom is away and David Crumley is at work,
12 so you are there alone with the kids. And it is pretty
13 routine for Brandon to stop by if he was going to school
14 at Piedmont Tech?

15 A He would stop by on his way home. He would, on his
16 way to Greenwood was where he had to go to school and on
17 his way back from Greenwood my house was on Highway 72 so
18 he would stop by.

19 Q So that wasn't out of the ordinary for him to stop
20 by?

21 A No.

22 Q And did you argue with Brandon that day?

23 A Not, well about the pillow incident. I wouldn't
24 really call it an argument but he had something to say
25 about that.

- 1 Q Well, did you also argue with him about a
2 conversation that you had with someone on Facebook, Damion
3 Carlisle? .
- 4 A I am not sure.
- 5 Q You don't recall that, do you know who I am speaking
6 of?
- 7 A I do know Damion Carlisle, yes.
- 8 Q And that was, I believe a friend of yours on Facebook
9 and on Facebook Brandon had access to your page, correct?
- 10 A Correct.
- 11 Q So he could see who you were talking to or who was
12 leaving messages for you?
- 13 A He should have been, yes.
- 14 Q And I believe Damion Carlisle was on your friend's
15 list, correct?
- 16 A Correct.
- 17 Q He was on Brandon's friend's list as well?
- 18 A I don't know that he was friends with Brandon.
- 19 Q Okay. Do you recall having an argument with Brandon
20 Lewis that day because of your communication with Mr.
21 Carlisle on Facebook?
- 22 A I don't recall that argument but it is possible.
- 23 Q What else were you arguing with him about?
- 24 A Just the pillow where, you know, where he playfully I
25 thought hit me in the face with the pillow and when I went

1 to hit him in the face back with the pillow he got angry
2 about that. But that wasn't particularly an argument.

3 Q Did you have a discussion with him about needing
4 money?

5 A Yes. I think I did have a discussion about needing
6 money.

7 Q And that was with you and Mr. Lewis had that
8 conversation together, correct?

9 A I think so.

10 Q Now, later that night I believe your testimony was
11 that you spanked Owen because he didn't want to brush his
12 teeth, is that right?

13 A Yes.

14 Q And your testimony was that was the first and only
15 time you had spanked him?

16 A Yes.

17 Q Happened to be this same night?

18 A Yes.

19 Q Did Mr. Lewis advise you to spank him?

20 A No, he did not.

21 Q That is something you made the decision to do on your
22 own?

23 A I did.

24 Q Now, also during your testimony on direct examination
25 you stated that when Brandon Lewis would stay over Victim

1 would often wake up because his footsteps were loud?

2 A Yes.

3 Q And you stated that you could easily hear your
4 daughter if she called for you in the other room?

5 A As long as I wasn't asleep, I am a heavy sleeper but
6 I could usually hear her say like, Mama, Mama.

7 Q Well, on this particular night you stated that while
8 you were in the other room reading to Owen that you heard
9 her saying, Mama?

10 A I heard her like whining and whimpering, fighting,
11 sleep.

12 Q You don't recall stating early on direct examination
13 that you heard her call out for you?

14 A That was on the way in from smoking that I heard her,
15 after we got through smoking that I heard her calling for
16 me.

17 Q Okay. And you came in what door after you finished
18 smoking?

19 A It was the, there is a door that comes through the
20 kitchen, a side door I guess you would say.

21 Q Are you talking about his door here?

22 A Yes.

23 Q So, you had been outside smoking and you came in, as
24 soon as you came in you could hear her saying Mama from
25 her crib?

1 A As soon as I walked into the kitchen I heard her.

2 Q And you are right here and you hear her saying Mama
3 and you go to her room, correct?

4 A Correct.

5 Q And I believe you testified before that when Victim
6 would be in her crib you sat her down and one of the
7 arguments you had about Brandon is that if he would go to
8 the bathroom he would wake Audrina up?

9 A If he walked louder like with his footsteps he would
10 most likely wake her up.

11 Q Okay. Because that had happened before and you had
12 actually, that is something that you had mentioned to him?

13 A Yes.

14 Q Now, when Victim ordinarily is in her room during
15 the night how is it that if she needed her diaper changed
16 you would know it?

17 A She would wake up every morning at generally the same
18 time, 3:00 a.m. for another bottle and that is when I
19 would do that.

20 Q When you say she would wake up, you mean she would
21 wake up because she is hungry?

22 A Right and she would call for me.

23 Q So she would call for you or cry and you would know
24 it and you would wake up and you would go and change her
25 diaper and give her a new bottle?

1 A Right.

2 Q And that is the way it has been pretty much since you
3 have lived there with Victim, correct?

4 A Correct.

5 Q There is no question in your mind, whatsoever, that
6 Audrina was in good health, her normal self as you put it,
7 on the evening of October 12th?

8 A There is no question, no.

9 Q You had given her a bath that night, right?

10 A Correct.

11 Q Tell us what bruises were on your daughter, what
12 marks were on your daughter when you gave her a bath?

13 A When I gave her a bath I think she still had the
14 light bruise from the, where she had hit her head on the
15 crib but other than that that is all.

16 Q Your testimony is that the only injury your daughter
17 had at that point and time was the forehead bruise?

18 A Correct.

19 Q You are talking about this bruise that had been
20 present since October 6th or earlier, correct?

21 A Correct.

22 Q The bruise that goes from here across to here?

23 A Correct.

24 Q More like a whelp?

25 A Correct.

1 Q So this photo being taken October 6th that bruise was
2 still there and visible on October 12th, correct?

3 A Correct.

4 Q Let's talk about the interview that you did with
5 Calvin Hill. Do you remember talking to him?

6 A Yes, I do.

7 Q Where did you talk with him at?

8 A At Greenville Memorial Hospital in a waiting area.

9 Q All right. And do you remember talking to the State
10 Law Enforcement Division?

11 A I do.

12 Q When they interviewed you one of the things they
13 asked you about was the bruises on Victim, didn't they?

14 A Yes.

15 Q And you stated that she had a bruise on her chin and
16 stomach, correct?

17 A I did.

18 Q Why would you have been telling them about bruises
19 that they saw at the hospital, you were aware they were at
20 the hospital with Victim as well, correct?

21 A I never saw them in the hospital.

22 Q You saw them at the law enforcement center?

23 A I saw them at the law enforcement center, yes.

24 Q And they were asking you about what kind of bruises
25 your daughter had gotten, correct?

1 A Correct.

2 Q And you stated well she had a chin bruise and a
3 stomach bruise?

4 A Correct.

5 Q And you stated they asked you how it was that she had
6 these bruises and you weren't aware of it and you said,
7 well she doesn't normally cry when she falls? Do you
8 recall making that statement?

9 A I don't think that is how the statement was made. I
10 was, the chin and stomach bruise. I was talking about from
11 the hospital.

12 Q So, your testimony is that you were telling law
13 enforcement that she had a stomach bruise because you saw
14 it for the first time at the hospital?

15 A Yes.

16 Q And just to be straight we are talking about this
17 stomach bruise here, correct?

18 A Correct.

19 Q And you also told them about her having a chin
20 bruise, correct?

21 A Correct.

22 Q Now, Ms. Hepburn, I believe that the testimony has
23 been that EMS arrived at your house within about ten
24 minutes?

25 A Correct.

1 Q Of y'all calling them. And you were aware that when
2 they cut her onesie off the abdominal bruise is there, the
3 chin bruise is there as well as an additional bruise under
4 the jaw line. Those bruises were different colors?

5 A They didn't cut her onesie off in front of me. I
6 believe it was in the EMS vehicle, it wasn't in front of
7 me.

8 Q So they go out to the EMS vehicle and they cut her
9 onesie off and these bruises are all readily visible and
10 they are different colors but you don't know how they got
11 there?

12 A No, I do not.

13 Q And your testimony to us is that when you gave her a
14 bath they weren't present?

15 A Correct.

16 Q Even though they are different colors, you weren't
17 aware they were there?

18 A I was not aware they were there.

19 Q And when this SLED agent asked you about previous
20 bruises, you said a chin bruise and an abdominal bruise?

21 A She didn't ask me about previous bruises, she asked
22 me about bruises.

23 Q What did you think she was talking about?

24 A Bruises that she had.

25 Q Bruises that she had while laying in a hospital?

1 A Bruises that I had seen. I had been to the hospital
2 and saw her with the bruises.

3 Q By the time you had been to the hospital, let's make
4 this clear. You didn't meet with the SLED agents until
5 after you left the Greenville Hospital, correct?

6 A Correct.

7 Q And you had been in her room at the Greenville
8 Hospital?

9 A Correct.

10 Q And by that time you were fully aware that she had
11 way more than just a stomach bruise and a chin bruise that
12 were of prominent color, she had fresh bruises all over
13 her jaw and underneath her jaw and along her clavicle.
14 You saw that, didn't you?

15 A I saw bruising.

16 Q You saw bruising?

17 A Yes.

18 Q This is your daughter at Greenville before you even
19 had that interview with the State Law Enforcement
20 Division. This is a photograph of your daughter in
21 Greenville less than twelve hours after EMS arrived. She
22 has got bruising here, here, here, here, that is State's
23 exhibit 7. Along the tape, underneath her jaw, apparently
24 everyone can see including the doctors at both hospitals.
25 Yet when law enforcement ask you about bruises you said,

1 well, she had a stomach bruise and a chin bruise.

2 A Yes.

3 Q So you didn't mention any of the fresh bruises, you
4 happened to mention the old bruises?

5 A I mentioned the ones that I saw in the hospital.

6 Q That according to everyone else's testimony is old.

7 MR. ABLE: Judge, I am going to object. I don't
8 think there is any testimony as to the age of the bruises.
9 I believe the testimony was that they could not be--

10 MS. MAYES: I can rephrase that, Your Honor.

11 MR. ABLE: They couldn't be dated, all the experts.

12 THE COURT: The jury will recall the testimony as
13 they recall the testimony because you are the fact finders
14 in this particular case. Ms. Mayes, if you can rephrase
15 please do so.

16 Q So, Ms. Hepburn, it happens to be that when they are
17 asking you about the bruises the bruises that you
18 mentioned are the ones that EMS could observe upon arrival
19 at your home, correct?

20 A I don't know what EMS observed.

21 Q And all the other bruises that were visible at the
22 Greenville Hospital to her shoulders, underneath her jaw,
23 along different parts of her abdomen, lower abdomen and
24 pelvis, you failed to mention those, didn't you?

25 A I did.

1 Q And I believe your next statement to the State Law
2 Enforcement Division, after you spoke of the bruises, your
3 next statement, was that Victim doesn't cry when she
4 falls, do you recall that?

5 A Yes.

6 Q So that was the next logical statement that you made,
7 Victim would fall, she did not cry?

8 A Actually I was being questioned throughout the
9 interview, they are asking me various questions. They
10 didn't really run together so that wasn't the next thing I
11 thought of saying, that is how I was being questioned.

12 Q So, if in the records of the conversation it is
13 reported that you knew of a chin bruise and a bruise to
14 Victim stomach and that the next significant statement
15 that you made was that when Victim would fall she did not
16 cry. You don't know why it is recorded that way?

17 A I know that when she fell she just got back up and it
18 didn't bother her to fall or anything like that. She
19 would whine but really wouldn't cry.

20 Q So, according to your testimony not a single one of
21 these bruises or injuries that Victim had ever received
22 had been witnessed by you, correct?

23 A What are we talking about, what.

24 Q Any of her bruises?

25 A I noticed her with the bruise on her forehead and the

1 rash on her neck.

2 Q And you have no knowledge as to how she got the
3 stomach bruise, is that your testimony?

4 A Yes, I have no knowledge.

5 Q Or the chin bruise?

6 A And the chin bruise.

7 Q Or any of the fresh bruises that were at the hospital
8 in Greenville?

9 A Or any of the chin bruises, yes.

10 Q And your testimony is that you don't know how she got
11 the forehead bruise?

12 A I assumed that she had hit her head on the crib.

13 Q Or the neck marks?

14 A The neck marks I don't know how those happened. But
15 like I said, I took her to the doctor.

16 Q Now, let's talk a little bit about this forehead
17 bruise. Do you remember Calvin Hill with DSS asking you
18 specifically about what bruises had been on **Victim**?

19 A I don't remember him specifically asking what bruises
20 had been on her.

21 Q You don't. You knew he was with the Department of
22 Social Services, didn't you?

23 A I think he was asking if she had any previous
24 injuries or anything like that.

25 Q All right, previous injuries?

1 A Correct.

2 Q And that is what we are talking about and that is
3 something that he needed to know because he needs to know
4 what happened to Victim, correct?

5 A Correct.

6 Q Same thing as the State Law Enforcement Division when
7 they were asking you questions, it was to find out what
8 had happened to Victim, correct.

9 A Correct.

10 Q And you are saying you have no idea what had happened
11 to Audrina. So it is logical for them to ask if there had
12 ever been any previous injuries to Victim, correct?

13 A It is.

14 Q Because by this point everybody knew that Victim
15 injuries were the result of child abuse, correct?

16 A Correct.

17 Q In fact you had been informed that at the Self
18 emergency room by Dr. Curry herself?

19 A Correct.

20 Q So before she ever got to Greenville you were told
21 directly by the doctor that her injuries were severe and
22 that it was the result of child abuse?

23 A Correct.

24 Q So when law enforcement starts asking questions and
25 the Department of Social Services asked questions there is

1 no doubt that it is in connection to child abuse, correct?

2 A Correct.

3 Q And one of the things that Calvin Hill wanted to know
4 is is about previous injuries to Victim. And when you
5 spoke with Calvin Hill you informed him that during the
6 last two or three weeks you had noticed bruises on

7 Victim

8 A Correct.

9 Q And you stated that you did not know how they got on
10 her?

11 A Correct.

12 Q And then you stated to him that she had a fingerprint
13 bruise on her forehead?

14 A Correct.

15 Q We are talking about this bruise?

16 A Correct.

17 Q And those were in your words that it was a
18 fingerprint bruise, correct?

19 A Correct. My mom and I were discussing it and we were
20 trying to figure out where it came from and that is where
21 we got the, just looking at the size and how it appeared.

22 Q It appeared that someone had grabbed her by the head
23 or left some type of fingerprint bruise on her head,
24 correct?

25 A That is not what we were implying, it was more based

1 on the size of it and how it appeared.

2 Q So you were calling it a fingerprint bruise?

3 A Correct.

4 Q Without thinking that someone had used their hand to
5 inflict that injury?

6 A Correct.

7 Q And then one of the other things you said to Calvin
8 Hill after you told him about what you term the
9 fingerprint bruise on her forehead is that you said she
10 had a bruise on her chin, correct?

11 A Correct.

12 Q Didn't we just talk about the preexisting bruises to
13 your daughter and you stated that she only had the bruise
14 on the forehead?

15 A Correct.

16 Q So she did have the bruise on the chin and you knew
17 about that?

18 A No, I did not know about the bruise on the chin.

19 Q Calvin Hill asked you about her previous injuries.
20 You said that during the last two or three weeks you had
21 noticed bruises on Victim and you didn't know how they
22 got there?

23 A The bruises that I was talking about was shin bruises
24 like bruises around her shin area and on the leg, like on
25 the front sides and the one on her forehead.

1 Q And you stated then to Calvin Hill that Victim had a
2 fingerprint bruise on her forehead and chin and rash on
3 her neck?

4 A The rash on her neck was previous. The bump on her
5 forehead was still there and the, like I said the chin
6 bruise was something that I noticed in the hospital.

7 Q So he is asking you about these previous injuries at
8 the last two or three weeks that you had witnessed and you
9 mentioned to him the fingerprint bruise and then the chin
10 and then the rash on the neck but your testimony you just
11 threw the chin in because he saw it at the hospital?

12 A Correct.

13 Q He has this conversation with you in Greenville,
14 correct?

15 A Correct.

16 Q You had already seen her so you knew about the
17 stomach bruise?

18 A Correct.

19 Q You didn't mention that?

20 A No, I didn't.

21 Q And he had also asked you if you noticed any bruises
22 on Owen and you said no?

23 A Correct.

24 Q He asked you if you allowed Brandon to discipline
25 your kids and you stated no?

1 A Correct.

2 Q Then you told him about sometimes you would wake up
3 and Brandon would be in her room after you put her in a
4 crib and he would be in her room at night holding her?

5 A Correct.

6 Q How many occasions did that occur?

7 A About two times or so.

8 Q Well, what would cause you to wake up?

9 A I would hear **Victim** like crying or whining.

10 Q From your room?

11 A If I was in my room.

12 Q Or from the den if you were in the den?

13 A I was usually just walking around the house cleaning
14 things up.

15 Q All right. So, the times you would find him holding
16 your daughter you usually would be just walking around the
17 house cleaning up?

18 A Usually.

19 Q And if she would call for you or whimper as you put
20 it or whine you can hear from where ever you were in the
21 house, cleaning up?

22 A That is depending on if the TV was on with the
23 surround sound or if just certain other noise,
24 distractions.

25 Q You could hear her from the kitchen?

1 A I should have been able to, yes.

2 Q Now one of the other things that Calvin Hill asked
3 you about is how Victim and Brandon get along, correct?

4 A Correct.

5 Q And you stated to Calvin Hill that Victim didn't
6 like Brandon?

7 A Correct.

8 Q And you stated that she liked him at first but the
9 last two or three months she didn't want to be around
10 Brandon?

11 A Correct.

12 Q And he asked you if you thought that was strange?

13 A Correct.

14 Q And you said you had been dating Brandon about six
15 months?

16 A Correct.

17 Q So according to you and your conversation with Calvin
18 Hill during the last two to three months Victim did not
19 want to be around Brandon?

20 A Correct.

21 Q And then when he asked you about previous injuries,
22 as you put it, you told him that during the last two to
23 three weeks you noticed bruises on Victim and you didn't
24 know how they got there and you mentioned the fingerprint
25 bruise, the chin bruise and the rash around the neck.

1 A Correct.

2 Q And I believe you were testifying earlier on direct
3 examination about the events of that night, there was
4 discussion about the bottle. This is your room, isn't it?

5 A Yes, it is.

6 Q This is State's exhibit 38. This would be your bed?

7 A Correct.

8 Q Television?

9 A Correct.

10 Q Audrina's bottle?

11 A Correct.

12 Q And when is that bottle from?

13 A That was around lunch time that day, naptime.

14 Q So what was your testimony concerning her later
15 bottle?

16 A As far as?

17 Q Well, you mentioned previously on direct examination
18 that she had another bottle?

19 A She did, that night when I was putting her down for
20 bed I always make her a fresh bottle.

21 Q And what did you do with the bottle on that night?

22 A I sat it on the dresser located to the left of the
23 crib, on the same wall that the crib was on.

24 Q All right. Let's take a look at this photograph
25 which is State's 62. There is her crib and the dresser is

1 not in this photo?

2 A It is not.

3 Q Is it in this particular photograph, take a look at
4 this.

5 A It is.

6 Q And is it in this particular photograph?

7 A It is.

8 Q And those are Audrina's room?

9 A Correct.

10 MS. MAYES: Your Honor, this would be State's exhibit
11 for evidence number 63 and 64.

12 THE COURT: Without objection?

13 MR. ABLE: No objection.

14 MR. WISE: No objection.

15 THE COURT: State's 63 and 64 are in evidence without
16 objection.

17 (Whereupon, State's Exhibits 63 and 64 were admitted
18 into evidence.)

19 Q This is State's 64, you are referring to this dresser
20 here?

21 A Correct.

22 Q And you stated on direct examination that you put the
23 bottle on that dresser?

24 A No, I did not.

25 Q What was so significant from your testimony about the

1 bottle on the dresser?

2 A I said that whenever I came home to, from the office,
3 from Greenwood Hospital to come home and get dressed and
4 put some clothes on, that whenever I was walking by her
5 room I noticed that there was a bottle sitting on that
6 dresser by the crib.

7 Q On that dresser?

8 A Correct.

9 Q So your testimony is that you wouldn't know how her
10 bottle got on this dresser?

11 A Correct.

12 Q Because you didn't put it there?

13 A Correct.

14 Q And your testimony is that you never went over to the
15 dresser and moved the bottle?

16 A Correct.

17 Q And you wouldn't have tampered with the bottle in any
18 way?

19 A I wouldn't have tampered with the bottle in any way.

20 Q And just to make clear Brandon Lewis never came back
21 to your house, did he. He wasn't with you when you went
22 back?

23 A He wasn't with me when I went back, he did come back
24 to our house to get his belongings.

25 Q When was that?

1 A I am not sure.

2 Q Were you there?

3 A I was not.

4 Q And when you say that he came back to your house to
5 get his belongings that was after the search warrant, that
6 was after you got arrested?

7 A I am not sure.

8 Q You weren't there?

9 A I wasn't there.

10 Q And your mom wouldn't have tampered with the bottle,
11 would she?

12 MR. ABLE: Objection, speculative.

13 THE COURT: Sustained, if you care to rephrase that,
14 Ms. Mayes.

15 Q To your knowledge no one else would have entered
16 Victim room and tampered with any evidence would they,
17 to your knowledge?

18 A To my knowledge, no.

19 Q All right: Let's talk about the testimony you had
20 earlier about making dinner, I believe that is what you
21 testified to yesterday, that y'all made dinner, you ate in
22 the kitchen area and then you put your plates away?

23 A We were actually eating in the living room area.

24 Q And then what happened with the plates?

25 A I am sure they got taken to the kitchen and put in

1 the sink.

2 Q They wouldn't have ended up in your room?

3 A I don't think so, no.

4 Q You don't have any memory of that?

5 A Not plates in my room.

6 Q And when Brandon was over later that night, I believe
7 your testimony was that after you went to bed and read to
8 Owen he came in at some point and asked you if you wanted
9 something to eat, correct?

10 A After Owen and I fell asleep he came in and asked me
11 if I wanted something to eat or if I would watch the movie
12 with him.

13 Q So you were awake at that point?

14 A He woke me up, yes.

15 Q Did he have a plate with him?

16 A I don't think he did.

17 Q Did he eat in your room?

18 A I don't think he did, no.

19 Q Do you know how plates got into the trash can of your
20 room?

21 A Could have been from days before or during the day,
22 eating in the room or snacking in the room.

23 Q Now, when did you next see Brandon after he came in
24 and asked you to watch the movie?

25 A The next time when I saw him was when he was in my

1 room with Victim in his arms.

2 Q Tell us about the Orajel, where were you when you
3 gave Victim the Orajel?

4 A In her room.

5 Q And you had gotten into her room from where?

6 A From the living room.

7 Q So, you had first put her down and then you heard her
8 whining or crying because she wasn't asleep yet?

9 A When I first put her down we had stepped outside to
10 smoke and came back in and when we came back in I guess
11 the noise and she was awake calling my name.

12 Q And that is when you testified you first came in
13 through that kitchen door and as soon as you came in that
14 kitchen door you could hear calling your name?

15 A Correct.

16 Q So you went to check on her and decided that she
17 needed Orajel?

18 A After I brought her to the living room, we sat in
19 there for a little while and she was like tired, fighting
20 sleep tired and I noticed her gums appeared to be sore.
21 She was kind of chewing her hands and stuff like that. So
22 that is when, that was the second time that I went to put
23 her down to sleep and then administered Orajel.

24 Q And that was in her room?

25 A In her room.

1 Q And when you are talking about Orajel you are talking
2 about the Orajel in the little tube, correct?

3 A Yes, the children's Orajel in the small tube.

4 Q All right. And when you say you had administered
5 Orajel where was she?

6 A She was in her crib.

7 Q She was in her crib?

8 A Standing up.

9 Q Standing up. Show us how you administer the Orajel.

10 A She was standing up and I told her to open her mouth
11 and I went around the back of the teeth to the front and
12 on the lower gums from the back and around to the front.

13 Q And you used your left hand, you placed your left
14 hand inside of her mouth to administer the Orajel?

15 A Correct.

16 Q And she is standing up?

17 A Correct.

18 Q And you said open your mouth?

19 A Correct.

20 Q And she opened her mouth, at what point did you hold
21 her chin in place?

22 A I didn't hold her chin in place, I held her from, her
23 back, like neck and the back of her head.

24 Q All right. So your testimony is that you had
25 administered the Orajel, you reached around and held her

1 from the back?

2 A Yes.

3 Q And then after that you testified yesterday for the
4 first time you went back into her room at a later point at
5 night to get the book, correct?

6 A Yes, after I had administered Orajel and then went
7 back into the living room. When I was bringing Owen to
8 brush his teeth, after we got done brushing his teeth, we
9 didn't have any books in the room so I stepped in the grab
10 a couple of books and went back into my room.

11 Q And there is no doubt, according to your testimony,
12 that she was fine at that point because she was moving her
13 head and turned and looked at you, correct?

14 A Correct.

15 Q And did you speak to her then?

16 A No, I wanted her to wind down and go to sleep.

17 Q Now when you spoke with Dr. Crosswell in Greenville,
18 that was when your daughter was in critical condition,
19 that was before you had come back to Laurens and spoke
20 with law enforcement, correct?

21 A Correct.

22 Q And you told Dr. Crosswell about giving her the bath
23 and laying her down approximately at 8:30, do you recall
24 that?

25 A Yes and I was just guesstimating on the time, I

1 didn't look at the clock that entire night, I normally
2 don't.

3 Q And then the next thing you informed Dr. Crosswell
4 about is that she had become fussy and you picked her up,
5 you gave her some Orajel and then you put her to bed
6 around 10:30?

7 A Correct.

8 Q And then you reported that your boyfriend woke you
9 and stated, asked you to watch a movie and you declined?

10 A Correct.

11 Q And then the next you remember was waking up and he
12 had Victim in his arms?

13 A Correct.

14 Q So there is no question that you forgot to tell her
15 about the other time or the last time you saw Victim
16 healthy.

17 A Correct.

18 Q Now, when you spoke to Dr. Crosswell do you remember
19 telling her Audrina had blood on her mouth and tongue?

20 A Yes, I was referring to the fact that Brandon had
21 told me that.

22 Q You are stating that you did not see, you did not see
23 the blood on her mouth?

24 A I did not see blood on her mouth, her mouth was kind
25 of reddish, pink in appearance but I didn't see any blood

1 in it.

2 Q What is this location?

3 A That is the bathroom between my room and the kids
4 room.

5 Q And looking at the diagram are you talking about this
6 bathroom here?

7 A Yes.

8 Q Between **Victim** room and your room?

9 A Correct.

10 Q What is normally located here on the towel rack?

11 A Sometimes there can be a towel there, sometimes there
12 may not be, it just depends.

13 Q Why is there a white towel in your daughter's crib?

14 A I don't know why there is a towel in her crib, I
15 didn't have a towel in her crib.

16 Q So your testimony is that you have never seen that
17 before?

18 A I have seen that type of towel in the bathroom, that
19 is where I keep those type of towels.

20 Q In this bathroom here?

21 A In that bathroom there, correct. There is a shelf
22 above the toilet, just like three shelves for towels and
23 it is located on the top left where the towels like that
24 should be.

25 Q And you are familiar with **Victim** blanket?

1 A Yes.

2 Q And her bumper pad?

3 A Yes.

4 Q And your testimony is you have never seen the white
5 towel before in her crib?

6 A No, ma'am.

7 Q Did you or were you frustrated about the fact that
8 you were home with your kids 24/7?

9 A No, not at all.

10 Q In addition to having a Facebook page you also had a
11 Myspace page during this point and time, didn't you?

12 A I think but I really didn't, oh, I know I did but I
13 really didn't access it a whole lot.

14 Q But it was your page and you filled out the profile
15 which is where you tell other members about yourself,
16 correct?

17 A Correct.

18 Q And when you filled out your Myspace, a profile in
19 the about me section your words were, I hate being at
20 home, capital letters?

21 A I would rather be out of the house, outside,
22 somewhere other than inside.

23 Q I hate being at home, I hate being alone, I am crazy
24 and find myself to be spontaneous. I wish you would judge
25 me, it could be fun.

1 MR. ABLE: Objection, Your Honor, relevance.

2 THE COURT: Where are you going with this, Ms. Mayes,
3 how is that relevant?

4 MS. MAYES: I can rephrase, Your Honor.

5 Q This was your Myspace profile during October of 2009,
6 correct?

7 A It sounds right, correct.

8 Q So when the words, I hate being at home were used
9 because you typed it in yourself describing your profile?

10 A I believe I would have typed that, yes.

11 Q Do you recognize this photograph?

12 A Yes.

13 Q And who is depicted in this photograph?

14 A I am.

15 Q Along with who?

16 A Victim .

17 Q And this was taken approximately the summer, early
18 summer of 2009?

19 A I would assume based on the clothing.

20 Q Okay.

21 MS. MAYES: Your Honor, I believe this would be
22 State's exhibit 65 for evidence.

23 THE COURT: Show it to Mr. Wise and Mr. Able, please.
24 Any objections?

25 MR. WISE: I don't have any objection.

1 MR. ABLE: I don't know what it is intended for,
2 timeframe.

3 MS. MAYES: I can lay a foundation.

4 THE COURT: Ms. Mayes, if you will, proceed Ms. Mayes
5 and link it to something relevant. I will rule on
6 admissibility in a second, subject to her linking it up to
7 relevance.

8 Q Ms. Hepburn, in that particular photograph your
9 fingernails are done as the half and half, right, the half
10 clear and half black at the end?

11 A Yes. I had those done for an event that I went out
12 to.

13 Q All right. And there is no doubt that you had
14 fingernails that you liked to keep clean and manicured,
15 correct?

16 A Actually no. I just got those done for an event and
17 they came off a week or so afterwards. I never got my
18 nails done.

19 Q All right. So, your testimony is that you happened
20 to have fingernails in that photograph and you deny that
21 you had fingernails longer than the tips of your fingers
22 in October of 2009?

23 A What are you asking, I am sorry.

24 Q Did you or did you not have fingernails in October of
25 2009 past the tip of your fingers?

1 A I could have or I may not have, I don't know for
2 sure.

3 Q All right. I am going to ask you a little bit more
4 about your earlier testimony that Brandon's footsteps
5 waking up the baby.

6 A Okay.

7 Q You say that you are referring to and this is State's
8 exhibit 35. You are referring to the fact that right here
9 in your room if Brandon were to walk down this hall and go
10 to the bathroom, according to your previous testimony,
11 that would wake Victim up?

12 A In most cases, yes.

13 Q All right. And that it had been actually been a
14 point of contention between the two of you?

15 A I brought it up as, I asked him to walk lighter or
16 either take off his shoes.

17 Q And your previous testimony was that normally
18 throughout the time Victim had lived there with you and
19 your mama in Cross Hill, that during the night if she
20 needed a bottle, if she needed her diaper changed you
21 would hear her?

22 A Yes, she would call my name out or just cry.

23 Q And I believe your previous testimony was that
24 earlier in the night you were all the way in the kitchen
25 which isn't visible in this photograph but you would come

1 in from smoking a cigarette and you can hear Victim in
2 her crib saying mama?

3 A Yes, I could.

4 Q And on this particular night when you testified that
5 after you read Owen the book and you and Owen are there in
6 bed, your door was left open?

7 A Yes, it was.

8 Q So this night was about like any other night, you are
9 in bed, the door is open and Victim is in her room?

10 A Correct.

11 Q And I believe your testimony was that if Victim
12 door was pulled shut, it was not closed completely, it was
13 left cracked?

14 A Correct.

15 Q And your testimony is that on this particular night
16 you never heard a sound, all you did was wake up and find
17 Brandon Lewis in your room with your daughter?

18 A Correct.

19 Q Your testimony is that the last time you saw her was
20 when you entered her room to get a book and you saw her
21 moving her head around knowing that she was still okay at
22 that point?

23 A Correct.

24 Q And with your door open your testimony is that you
25 never heard anyone go down the hallway?

1 A Correct.

2 Q And you never heard anyone enter your daughter's
3 room?

4 A Correct.

5 Q And you never heard your daughter crying?

6 A Correct.

7 Q And you never heard anyone inflicting injuries on
8 your daughter?

9 A Correct.

10 Q You never heard a sound?

11 A Correct.

12 Q Nothing further.

13 THE COURT: Are you moving State's 65 into evidence?

14 MS. MAYES: No sir, Your Honor.

15 THE COURT: All right. Mr. Wise.

16 CROSS-EXAMINATION

17 By Mr. Wise:

18 Q Ms. Hepburn, you are left handed?

19 A Correct.

20 Q The day before this, a couple of days before this
21 incident you had applied for a job at Sykes in Greenwood,
22 correct?

23 A Sykes, yes.

24 Q And you had received a tentative acceptance for that
25 job?

1 A Yes.

2 Q And then shortly before this incident you found out
3 they weren't going to give you that job.

4 MR. ABLE: Judge, I am going to object to the
5 relevance.

6 THE COURT: Where are we going with this.

7 MR. WISE: Can we approach.

8 THE COURT: Y'all come on up.

9 (Whereupon, a bench conference was held in the
10 presence of the jury but out of the hearing of the
11 jury.)

12 Q The day before this incident or two days before this
13 incident they called you and said they were going to
14 withdraw that offer?

15 A Correct.

16 Q And that was the first job you had had in how long?

17 A Since September of that year.

18 Q September what?

19 A Of the same year, '09.

20 Q Where were you working in September?

21 A Rue 321.

22 Q 321.

23 A Rue 321, it is spelled R-U-E. It is a clothing
24 store.

25 Q But you no longer were working there?

1 A No.

2 Q This job paid about \$9.50 an hour or was going to?

3 A I understood around \$9.00 or so.

4 Q Okay. And a good job?

5 A Yes.

6 Q And were you upset about losing this job?

7 A At first I was disappointed about losing the job but
8 I also knew that I would rather be at home with the kids
9 anyways.

10 Q You knew what?

11 A I would rather be home with the kids anyway.

12 Q Okay. The fact of the matter, you had been up most
13 of the night before, the night of the 11th into the 12th,
14 you had been up practically all night that night?

15 A Correct.

16 Q Is that correct?

17 A Yes.

18 Q Didn't sleep hardly at all?

19 A No, not really.

20 Q Part of the reason was this job loss?

21 A No. I had free time to do what I wanted to do,
22 clean, I went on the computer, stuff like that.

23 Q Talk on the phone?

24 A Talked on the phone, I am sure I talked on the phone,
25 texted or something like that.

1 Q So, is it fair to say you slept no more than one or
2 two hours of the night of the 11th as well?

3 A Probably around about there.

4 Q So you had been up all day on the 12th then?

5 A Correct.

6 Q Correct. Now, when you talked to Daniel, when did
7 you talk to Daniel on the 12th?

8 A I am not really sure, we talked a lot.

9 Q Do you know his phone number?

10 A Do I know his phone number?

11 Q Yes.

12 A Not at that time. He has had a lot of different
13 phone numbers.

14 Q Okay. But you talked to him several times, correct?

15 A I don't know.

16 Q Did you ever tell Daniel Hepburn, when he asked you
17 about whether or not Victim had a necklace or a bib, did
18 you ever spontaneously say to him, I didn't choke her?

19 A No, I did not.

20 Q So you never said the words to Mr. Hepburn standing
21 here, sitting here, you never said the words, I didn't
22 choke her?

23 A I did not.

24 Q Or the word, nobody choked her?

25 A I did not.

1 Q Or anything like that?

2 A I did not.

3 Q Did you ever mention to Daniel Hepburn the word,
4 choke, in regards to Victim ?

5 A No, I did not.

6 Q What day did Sykes call you and tell you that they
7 were not going to give you that job?

8 A I am really not sure of the exact day or when they
9 called. I am guessing around the 10th or the 11th or
10 somewhere around there.

11 Q The 10th or the 11th?

12 A Around there.

13 Q When you talked to Agent Kirkland here, you made the
14 comment, she asked you a general question, is Victim
15 fussy, correct?

16 A Something along those lines.

17 Q Something along that line. And you responded by
18 saying she is whiny, correct?

19 A I am sure I said something along those lines, she
20 whines.

21 Q You responded by saying she cries all the time?

22 A She cried sometimes, I don't know about all the time.

23 Q Did you respond to Agent Kirkland by saying that she
24 cries all the time?

25 A I am pretty sure I said she cries sometimes.

1 Q And then you said to Agent Kirkland that she is
2 different from Owen?

3 A I am not sure what the question was ahead of that but
4 they were two different kids, yes.

5 Q Definitely two different kids but you volunteered to
6 Agent Kirkland that Audrina was different from Owen?

7 A There was a question before that I don't really
8 recall.

9 Q Did you frequently sleep with Owen?

10 A Only long enough to get him to sleep and then
11 transfer him over to his bed.

12 Q He had never spent the night then?

13 A I am sorry?

14 Q He never slept with you in the same bed overnight?

15 A That night, the night of the incident he did sleep me
16 that night because I had fallen asleep trying to get him
17 to sleep.

18 Q Prior to this he had never spent the night in your
19 bed all night?

20 A Yes, he has before.

21 Q So, Owen did frequently spend the night, would sleep
22 in your bed all night?

23 A Not frequently.

24 Q Occasionally?

25 A Occasionally, yes.

1 Q Did [Victim] ever do that?

2 A Yes she did occasionally.

3 Q Now, when you were in Greenville with Daniel you were
4 working at that time?

5 A Yes.

6 Q In 2000, when y'all first moved up there, before
7 [Victim] was born?

8 A Yes.

9 Q And you were working with, you were working at
10 Hooters at that point?

11 A Yes, I was.

12 Q Making some decent money?

13 A Yes.

14 Q Daniel was working?

15 A Yes.

16 Q He was making some decent money?

17 A No.

18 Q He wasn't making decent money?

19 A No.

20 Q And that was the reason y'all had fights or problems?

21 A That, childcare, not enough income.

22 Q Eventually he asked you to leave?

23 A He asked for a divorce.

24 Q He asked for a divorce. I guess that is the same
25 thing as asking you to leave, isn't it?

- 1 A Along those lines.
- 2 Q That was his suggestion?
- 3 A Yes.
- 4 Q Correct?
- 5 A Correct.
- 6 Q And you left?
- 7 A After trying to talk things out, yes I eventually
- 8 left. We were being evicted.
- 9 Q So you were being evicted?
- 10 A Yes, within a week or so.
- 11 Q Did y'all have somebody else living with you at that
- 12 time?
- 13 A Owen was living with us.
- 14 Q I am talking another adult?
- 15 A No.
- 16 Q So you left?
- 17 A Correct.
- 18 Q Moved back to Clinton or Cross Hill?
- 19 A Cross Hill.
- 20 Q Moved back to Cross Hill, correct?
- 21 A Correct.
- 22 Q And then that was, when did you move back to Cross
- 23 Hill?
- 24 A I believe it was December of '07.
- 25 Q December of '07, somewhere in that area, right?

1 A Somewhere in that area.

2 Q All right. And so at that time y'all were planning
3 on getting divorced?

4 A We were.

5 Q Correct?

6 A Correct.

7 Q All right. At that time you met Brandon Lewis too,
8 didn't you?

9 A Through Facebook, yes.

10 Q And started seeing him a little bit?

11 A Yes.

12 Q And when did you and, and you and Daniel started
13 seeing each other also during the same period of time?

14 A I don't think at the same time.

15 Q You don't think at the same time?

16 A No, it wasn't at the same time.

17 Q When did you learn that you were pregnant?

18 A Mid January of 2007.

19 Q 2007 or 2008?

20 A 2008, I am sorry.

21 Q 2008, okay. So, in January of 2008 you and Daniel
22 had been split up how long at that time?

23 A Approximately a month.

24 Q A month. All right. And you started seeing Brandon?

25 A Yes.

- 1 Q And you found out you were pregnant?
- 2 A Correct.
- 3 Q And you and Daniel tried to make a go of it again?
- 4 A Yes.
- 5 Q And then y'all moved to Washington, the State of
- 6 Washington?
- 7 A Correct.
- 8 Q How long did you stay out in Washington?
- 9 A March of 2008 until October, late October of 2008.
- 10 Q And Audrina was born in Washington?
- 11 A She was.
- 12 Q And y'all ended up having some disagreements there?
- 13 A Correct.
- 14 Q He was in the Army?
- 15 A Correct.
- 16 Q Didn't have enough money for you?
- 17 A No, that wasn't the issue.
- 18 Q All right. What was the difficulty in Washington?
- 19 A Coping with Victim preterm birth.
- 20 Q Excuse me?
- 21 A Coping with Victim preterm delivery and birth and
- 22 also just the fact that we never saw each other as a
- 23 family, also there wasn't much time together. And there
- 24 was only one vehicle, there were a lot of things that made
- 25 it difficult. And also not having childcare.

1 Q So, not having childcare was difficult, correct?

2 A Correct.

3 Q You were working where in Washington?

4 A I was not working, I was staying at home.

5 Q You were staying at home. And you wanted childcare?

6 A I would have wanted to maybe get a job, something
7 along those lines.

8 Q Well, was lack of childcare preventing you from
9 getting a job?

10 A I would say, not to mention the only one car which
11 Daniel took every day to work.

12 Q So you were left at home with no car?

13 A Correct.

14 Q Y'all were living in an apartment?

15 A Yes, we were in a third story apartment.

16 Q Apartment complex?

17 A Correct.

18 Q With other people?

19 A Correct.

20 Q So you and Daniel then decided that, did Daniel tell
21 you to leave and come back to South Carolina?

22 A We had discussions about me needing help with the
23 kids and wanting to be around family. And he asked me to
24 leave.

25 Q So you were not able to take care of the kids by

1 yourself?

2 A I could take care of the kids by myself but I would
3 like, I wanted help.

4 Q So if you needed help then you could not take care of
5 the two kids by yourself?

6 A I wanted help, I didn't need help.

7 Q All right. Were they too much for you to handle?

8 A Not at all.

9 Q You would feed them?

10 A Correct.

11 Q You could clothe them?

12 A Correct.

13 Q You could bathe them?

14 A Correct.

15 Q You could play with them?

16 A Correct.

17 Q You could put them to bed with no problem?

18 A Correct.

19 Q You could clean up the house with no problem?

20 A Correct.

21 Q And you needed help then for these children because
22 of?

23 A I wanted a family environment for them, they didn't
24 really have that.

25 Q So having someone come in and help you take care of

1 the children would give you a greater family environment
2 than your taking care of them by yourself?

3 A I just wanted them to have a better environment, like
4 more people to care for them. There was only me and
5 Daniel was at work all day and when he came home he was
6 tired so it was just me.

7 Q What did you need a stranger to come into that house
8 and do for you with those two children that you couldn't
9 do?

10 A I didn't want a stranger, I wanted family.

11 Q Part of the problem in Washington was you needed help
12 with the children?

13 A That and some other issues.

14 Q And if you had gotten some help with the children in
15 Washington you would have stayed?

16 A I am not sure that I would have stayed, no.

17 Q All right. So anyway who finally made the decision
18 for you to come back to South Carolina?

19 A There were some major financial issues that helped me
20 to make a decision to go ahead and leave.

21 Q He was in the Army, what rank?

22 A I think he was E4 at the time.

23 Q That wasn't paying enough for you to raise two
24 children on?

25 A The money was fine, the spending wasn't.

1 Q The spending wasn't, your spending or his spending?

2 A His spending.

3 Q Or both of y'all's spending?

4 A His spending mostly. I couldn't get out of the
5 house.

6 Q So he would spend money extravagantly and you didn't
7 like it?

8 A Correct.

9 Q And y'all argued about that?

10 A We had some talks about it, yes.

11 Q And whose decision was it to come back to South
12 Carolina?

13 A It was, I told him that I was planning on and going
14 on being with family and he told me to leave.

15 Q He said fine?

16 A Correct.

17 Q Get out?

18 A Correct.

19 Q So you packed up and left?

20 A Correct, within a few weeks.

21 Q And that was in October of 2008?

22 A Correct.

23 Q January of 2009 you go back out there?

24 A Correct.

25 Q For a week or two?

- 1 A Correct.
- 2 Q You were working at that time or not working?
- 3 A I was not, I was at home with the kids.
- 4 Q And staying at your mother's house?
- 5 A Correct.
- 6 Q And your mother was helping with the kids?
- 7 A Correct. When she would come home she would help
- 8 watch them while I made dinner and things like that.
- 9 Q Run errands and stuff like that?
- 10 A Correct.
- 11 Q You would get out of the house a little bit?
- 12 A Somewhat.
- 13 Q So, you went back out there in 2009, January?
- 14 A Correct.
- 15 Q And you and, with the idea according to you, I think,
- 16 to reconcile?
- 17 A Correct.
- 18 Q And didn't work out?
- 19 A It did not.
- 20 Q Y'all ended up in a big fight?
- 21 A We did.
- 22 Q To the extent that you hit him?
- 23 A Yes, we were both very intoxicated.
- 24 Q And y'all, he was saying things that you didn't like?
- 25 A Saying things that hurt me.

1 Q Like what?

2 A I am sorry?

3 Q Like what?

4 A We were just having arguments about things that
5 happened previously in the marriage, things that had been
6 happening when we were separated.

7 Q What did he say that you didn't like so much that you
8 struck him and gave him a black eye.

9 MS. MAYES: Objection, calls for hearsay.

10 THE COURT: Something offered from the truth of the
11 matter asserted, Ms. Mayes, it is being offered to explain
12 her reaction and gain, give the context to the
13 relationship and breakup they have. So that is the only
14 reason that this evidence is coming in, the context to the
15 reason that she and her husband had to depart ways.

16 A He told me that he had slept with someone that I knew
17 when I had been up there and slept with a couple of
18 people.

19 Q So he had had an affair in the State of Washington?

20 A Correct.

21 Q After you left?

22 A Correct.

23 Q And that upset you?

24 A It bothered me.

25 Q Bothered you. But you had had an affair with Brandon

1 when y'all split up back in 2007, didn't you?

2 A Correct.

3 Q So, that didn't bother you?

4 A He had also, but no.

5 Q So, he told you he had had an affair and that
6 bothered you and you hit him?

7 A I was intoxicated, we were arguing about a lot of
8 things but yes.

9 Q And then you came back?

10 A I mean, I was still there for a week or so, a week
11 and a half after that happened.

12 Q So, then you came back to South Carolina?

13 A Correct.

14 Q And you weren't going to try to reconcile again?

15 A No.

16 Q So, correct me if I am wrong. In Greenville Daniel
17 told you to leave, correct?

18 A Told me he wanted a divorce.

19 Q He wanted a divorce, go ahead and leave and you left?

20 A We were being evicted, I had to leave anyways.

21 Q Well, I mean he was going to live somewhere, you
22 chose to no longer live with him and he didn't want you to
23 live with him?

24 A Correct.

25 Q Correct?

1 A Correct.

2 Q So, in Greenville he told you to leave?

3 A Correct.

4 Q All right. Then you go to Washington and you have an
5 argument with him in Washington in October of '08 and you
6 leave, he tells you to leave and you leave?

7 A Correct.

8 Q So he told you to leave twice?

9 A Correct.

10 Q Then you go back to Washington in January of 2009 and
11 y'all have another argument?

12 A Correct.

13 Q And he basically tells you he isn't going to
14 reconcile, to leave again?

15 A And when I went to Washington to check on him, no,
16 that is not the reason.

17 Q Well, when you had the argument and you left to come
18 back after being up there for a week or two he told you to
19 just go ahead and leave, we are not going to reconcile?

20 A He actually wanted me to stay.

21 Q He actually wanted you to stay?

22 A Yes.

23 Q You wanted to leave?

24 A I had to get home to the kids.

25 Q So you left?

1 A Yes.

2 Q All right. And then in summer of 2009 when he comes
3 back here he moves his girlfriend in to his house?

4 A Correct.

5 Q Now, when you were interviewed by SLED Agent Kirkland
6 here at the Laurens Sheriffs Department, you remember
7 that?

8 A Yes.

9 Q And she asked you basically who could have done this,
10 correct?

11 A Correct.

12 Q And you said you don't put it past Daniel to do this,
13 correct?

14 A The form of the question was asking about if who all
15 was in the home, who all could have access to the home,
16 things like that. And I believe it was her that brought
17 up, who is the child's father.

18 Q But your answer was, you don't put it past their
19 father to do this?

20 A I didn't say that.

21 Q You didn't say that?

22 A No.

23 Q Okay. Then you said Daniel has resented you for the
24 divorce?

25 A I did say that.

1 Q You did say that?

2 A Yes.

3 Q So this is the man that had moved his girlfriend in
4 and told you to leave at least twice and you say he
5 resented you for the divorce?

6 A Yes.

7 Q You also accused Daniel of having aggressive
8 behavior?

9 A Between he and I, when we were together, yes.

10 Q He would hit you?

11 A No, as far as arguments go.

12 Q Excuse me. So, when you said Daniel has aggressive
13 behavior you weren't talking about being aggressive in the
14 sense that he would hit you?

15 A No.

16 Q You were talking about aggressive in the sense he
17 would argue with you?

18 A Correct. And I said we would argue with each other.

19 Q But the phrase you used was aggressive behavior?

20 A I could have but that is not what I meant.

21 Q Now, that afternoon when Brandon came by y'all got
22 into an argument about throwing a pillow at each other?

23 A I am not sure that was an argument, there were words
24 said.

25 Q Words said. All right. Correct?

1 A Correct.

2 Q And he threw a pillow at you and you turned around
3 and threw it back at him?

4 A Correct.

5 Q And then y'all had words said?

6 A Correct.

7 Q And actually ended up slapping him that day, didn't
8 you?

9 A No.

10 Q You didn't?

11 A No.

12 Q Okay. And then Brandon left and came back, you say
13 about 8:00 o'clock or so?

14 A Maybe a little bit later than that, when I was
15 getting the kids out of the bath.

16 Q And what kind of, did y'all have any disagreements
17 when he came back?

18 A Just the one that stands out in my head is just the
19 disagreement about him telling me that Owen was spoiled
20 and that I didn't discipline him well enough.

21 Q Now, but Owen wouldn't brush his teeth that night?

22 A Correct.

23 Q When Owen, where was Owen when you were trying to get
24 him to brush his teeth?

25 A In the living room, I was asking him in the living

1 room to walk with me to go brush his teeth.

2 Q Was he in your bedroom at all?

3 A We walked in there like to get the bed ready and then
4 from there we walked into the bathroom.

5 Q I am talking about your bedroom?

6 A Yes, my bedroom.

7 Q Y'all walked into your bedroom?

8 A Yes.

9 Q And Daniel was in your bedroom?

10 A Brandon.

11 Q Excuse me, Brandon was in your bedroom?

12 A Brandon followed and laid across the bed.

13 Q Was he playing with Owen?

14 A No.

15 Q So, Owen wouldn't brush his teeth?

16 A Correct.

17 Q You jerked him up?

18 A No.

19 Q What did you do?

20 A We got in the bathroom and even before in the
21 bathroom he had denied brushing his teeth. Like he said,
22 no I don't want to, no I don't want to, just even in the
23 bedroom and I was just trying to talk him into going in
24 there. And finally we went in there and once we got in
25 there he still denied brushing his teeth even after I got

1 the toothbrush ready. So, that is when I popped him on
2 the backside.

3 Q How did Daniel, excuse me, how did Owen get into the
4 bathroom?

5 A We walked into the bathroom.

6 Q Walked into the bathroom together?

7 A Correct.

8 Q Holding his hand?

9 A No.

10 Q Side by side?

11 A Side by side.

12 Q Were you upset with him?

13 A No, not really.

14 Q How many times did you strike him in the bathroom?

15 A Once.

16 Q Just once?

17 A Correct.

18 Q The first time you had ever struck him in your life?

19 A Correct.

20 Q Now, what size fingernails do you have today,
21 relatively short ones, correct?

22 A Correct.

23 Q You didn't have relatively short ones when the
24 picture was taken the State showed you?

25 A Correct, these were false nails.

1 Q And you would occasionally wear nails?

2 A No, only on this one occasion.

3 Q That is the only time in your life you have worn
4 false nails?

5 A Other than when I was like 12, we used to get them
6 all the time, yes.

7 Q Excuse me?

8 A Other than when I was like 12.

9 Q Since you were 20 years of age that is the only time
10 in your life you have worn false nails?

11 A I am pretty sure, yes. Oh yeah, I had another time
12 at prom. If it was like a very special event.

13 Q Very special event.

14 A Yes.

15 Q Maybe twice in your life?

16 A Maybe.

17 Q Now, there is a baby bottle in your room in a
18 picture, correct?

19 A Correct.

20 Q Let's see if I can find that one. In this picture
21 the baby bottle is in your room?

22 A Correct.

23 Q And that baby bottle you say had been there since
24 what time in the afternoon?

25 A I said around lunch time, nap time, that is when it

- 1 was there.
- 2 Q Lunch time or nap time?
- 3 A Correct.
- 4 Q And I would assume by then the milk in that bottle is
- 5 no longer good?
- 6 A Correct.
- 7 Q You don't clean the house that often then?
- 8 A I do but that day I was tired.
- 9 Q That day you were tired because you had been up all
- 10 the night before?
- 11 A Correct.
- 12 Q And you weren't anxious to do the little peddleing
- 13 things around the house?
- 14 A Correct.
- 15 Q Now, you say there was a bottle you say on a dresser
- 16 in **Victim** room that you saw later?
- 17 A Yes.
- 18 Q And you don't know who moved it?
- 19 A I do not.
- 20 Q Or what happened to it?
- 21 A I do not.
- 22 Q But it was sitting up on the dresser?
- 23 A It was sitting up on the dresser by her crib, it was
- 24 full.
- 25 Q It was full. When you put **Victim** to bed that night

1 you gave her the bottle?

2 A Yes, I give her the bottle.

3 Q You put it in the crib?

4 A Yes.

5 Q And you gave it to her to go to sleep with?

6 A Yes.

7 Q You also told Agent Kirkland that if Victim had
8 cried out that night you would have heard her?

9 A Yes, usually I did hear her.

10 Q Can you ever think of a time when you didn't?

11 A I am a heavy sleeper so there are times I am sure I
12 didn't hear her right away.

13 Q So, you are a heavy sleeper?

14 A Yes.

15 Q So you don't always hear her sleep or cry out at
16 night?

17 A I always wake up every morning at 3:00 in the morning
18 when she would wake up for a bottle.

19 Q So you would wake up automatically at 3:00 o'clock
20 and check on her and she would not cry out to wake you up?

21 A No, she would cry out.

22 Q And that would wake you up?

23 A Yes.

24 Q So, if Victim had been crying that night you would
25 have heard her?

1 A Yes but I was also tired.

2 Q I understand. Did you take anything to make you
3 sleep more soundly than normal?

4 A No.

5 Q So you would have heard her if there had been a
6 crying out, correct?

7 A I would assume, yes.

8 Q But you didn't hear her that night?

9 A No.

10 Q According to your testimony?

11 A Correct.

12 Q Now, you said that the first thing you remember is
13 that Brandon was in your room with Victim in his arms?

14 A That was the second thing I remember, the first thing
15 was him waking me up with the food.

16 Q I am talking about when Victim, when he realized
17 Audrina was hurt you testified that you remember Brandon
18 waking you up in your room with Victim in his arms?

19 A Yes.

20 Q Correct?

21 A Yes.

22 Q All right. And when you interviewed with Agent
23 Kirkland here didn't you tell her that you just remembered
24 your being in the hallway and Brandon saying something was
25 wrong with Victim?

1 A I am pretty sure that I said that is where I remember
2 holding her and trying to figure out what was wrong with
3 her. But, yes.

4 Q So you weren't holding her and trying to figure out,
5 what was wrong with her when Brandon was in the room with
6 you?

7 A When he brought her in it was dark in there.

8 Q You didn't turn the light on?

9 A No, the light was on in the hallway so I just walked
10 into the hallway.

11 Q You got out of the bed, correct?

12 A Correct.

13 Q Did you go to the bathroom?

14 A No.

15 Q You got out of bed?

16 A Correct.

17 Q Y'all walked out in the hall?

18 A Correct.

19 Q Brandon walked with you?

20 A Correct.

21 Q And so you just did not tell Agent Kirkland that
22 Brandon woke you up in the bedroom?

23 A I don't guess I did, no.

24 Q When you were evicted from the apartment in
25 Greenville Daniel was working at a car dealership?

1 A Yes.

2 Q And he was also in the National Guard?

3 A Correct.

4 Q Did y'all spend more time together in Greenville than
5 you did in the State of Washington?

6 A I think there was more time on the weekends.

7 Q Excuse me?

8 A I think there was more times on the weekends.

9 Q Even though he was in the Guard?

10 A In the Guard he would go one weekend once a month.

11 Q One weekend once a month?

12 A Yes.

13 Q And in the State of Washington he was full time Army?

14 A Correct.

15 Q And so the weekends were generally free there?

16 A It just depended on whether or not he was out in the
17 field or that kind of thing.

18 Q Well, would he be out in the field more than one
19 weekend a month?

20 A He would be there for two to three weeks at a time.

21 Q All right. Now, you have heard Brandon testify
22 before, haven't you?

23 A I don't I believe I heard him testify, I was there
24 for his deposition.

25 Q You didn't hear him testify at the DSS hearing in May

1 of 2010, May 18th?

2 A I am not sure.

3 Q You were there, weren't you?

4 A I am not sure.

5 Q You are not sure, all right. You were there for his
6 deposition in March of 2010, correct?

7 A Yes.

8 Q In which Mr. Able examined him in great length?

9 A Yes.

10 Q About what happened that night?

11 A Yes.

12 Q Is that correct?

13 A Yes.

14 Q All right. And also on the afternoon of the 13th of
15 October of 2009 did Officer Robert Plaxico show you a
16 statement from Daniel as to what he said happened that
17 night?

18 A You mean Brandon, yes.

19 Q Excuse me, Brandon, is that correct?

20 A Yes.

21 Q He showed it to you?

22 A Yes, he did.

23 Q Had you read it?

24 A Yes.

25 Q And you read it?

1 A I skimmed over it.

2 Q All right. And basically it is keeping in what he
3 said in his deposition in March of 2010, correct?

4 A I am sorry?

5 Q Basically what the statement said that you saw on the
6 afternoon of the 13th of October of 2009 was basically the
7 same as his deposition testimony in March of 2010?

8 A To my knowledge.

9 Q And when you got through with that statement did you
10 turn to Officer Robert Plaxico and say--

11 MR. ABLE: I am going to object to the Court's prior
12 ruling involving this testimony.

13 THE COURT: All right. Y'all come over here.

14 (Whereupon, a bench conference was held in the
15 presence of the jury but out of the hearing of the
16 jury.)

17 THE COURT: I believe we have an understanding, Mr.
18 Wise, you can continue, sir.

19 MR. WISE: I would like to mark this for
20 identification right now. Defendant's number 2.

21 Q Let me hand you what has been marked as defendant's
22 exhibit 2 for identification purposes only and ask you if
23 that is the statement that you read the afternoon of the
24 13th of October, 2009?

25 A It appears to be, yes.

1 Q I ask you after reading that statement, did you look
2 at Robert Plaxico and say the words to the effect of, oh,
3 my god it's all true, I just don't remember hurting my
4 baby?

5 A No, I did not.

6 Q Did you say anything like that?

7 A I looked over the statement and went through
8 sentences like, Owen, told her son to go brush his teeth,
9 we watched football, that kind of thing. I said these
10 statements are true.

11 Q Correct.

12 A And I also said that I did not hurt my baby, very
13 clearly.

14 Q All right. I ask you further, you talked to Agent
15 Kirkland here, correct?

16 A Correct.

17 Q And was also on October 13th of 2009?

18 A Correct.

19 Q And one of the questions that Agent Kirkland asked
20 you, what was Brandon doing, correct?

21 A I am not sure.

22 Q Words of that effect?

23 A I am not sure.

24 Q You are not sure. Well, did you ever tell Agent
25 Kirkland on that afternoon that Brandon was watching TV

1 during it all?

2 A I am not sure.

3 Q You are not sure. Thank you. I have no further
4 questions.

5 THE COURT: Mr. Able.

6 REDIRECT EXAMINATION

7 By Mr. Able:

8 Q Ashley, when you spoke to Agent Kirkland, you
9 described your children, how are they different?

10 A As two different kids, they have two different
11 personalities.

12 Q And were you saying that in a bad way, that one was
13 good and one was bad?

14 A No, not at all.

15 Q What were their personalities, how were they
16 different?

17 A Owen was or is just, they are both happy go lucky but
18 as far as his personalty goes, he was talking at that
19 point and she was trying to talk a little.

20 Q Ms. Mayes asked you about when you spoke to Dr.
21 Crosswell up in Greenville about not having mentioned to
22 her the fact that you had gone back into a room getting
23 books. Where was your daughter at that time?

24 A She was in her crib.

25 Q I am saying, when you were speaking to Dr. Crosswell

1 in the Greenville, where was Victim ?

2 A She was in a hospital bed.

3 Q And you were aware that her injuries were very
4 serious?

5 A I was.

6 Q How clearheaded were you at that moment?

7 A Not at all.

8 Q What were you wanting at that time?

9 A What happened to her and if I could see her, I would
10 rather be in the room with her than talking with anybody.

11 Q The information you provided to Dr. Crosswell, is
12 that what you testified to yesterday?

13 A Yes.

14 Q And you just left this little part out about stepping
15 back in the room to get the books for Owen and read those
16 books to him?

17 A Yes.

18 Q Now, the rashes, did they appear different to you?

19 A Not until she pointed out there is a slight color
20 difference but when I looked at it I couldn't tell.

21 Q Just looked all like one rash?

22 A Yes.

23 Q And again why did you take your daughter to the
24 doctor that day, September the 11th?

25 A Because I was worried and I didn't know what it was

1 and I didn't know how to fix it.

2 Q How did you learn there is a difference between the
3 two?

4 A She had to point it out.

5 Q When that was told to you did it cause you any less
6 concern when you were told it could have been caused by
7 coughing hard or crying or something like that?

8 A I was still very concerned because I didn't
9 understand what it was.

10 Q Now, you had mentioned that Calvin Hill from DSS,
11 case worker, there was broken capillaries, where did you
12 get that term from?

13 A One of the doctors had mentioned it and I had also
14 researched for petechiae.

15 Q How did you research that?

16 A On line.

17 Q The mark on the forehead, I think we had talked about
18 this briefly yesterday but Ms. Mayes asked you about it
19 again. To Calvin you described it as, to Mr. Hill you
20 described it as a fingerprint bruise. Why were you
21 classifying it or describing it in that fashion?

22 A Just the size of it and just the way it appeared so
23 that is how I wanted, in size, that is how I described it
24 to him and how me and my mama discussed it.

25 Q When you talked to Mr. Hill in Greenville at the

1 hospital, again Victim was obviously in the hospital,
2 right?

3 A Yes.

4 Q And where was your concern at that time when you were
5 talking to him?

6 A Audrina.

7 Q Now, you had mentioned in cross-examination a Damion
8 Carlisle?

9 A Yes.

10 Q Who is that?

11 A That is a friend of mine.

12 Q And what did Brandon, did Brandon confront you about
13 this gentleman, or did y'all talk about that that day?

14 A He could have, I really don't recall the
15 conversation.

16 Q Was there any indication by him that he was upset
17 that you had a male friend?

18 A He could of been. Like I said, I don't recall that
19 conversation.

20 Q Now, Ms. Mayes was asking you about the stomach
21 bruise and the chin bruise that you described to Agent
22 Kirkland. Where were you when you spoke to Agent
23 Kirkland?

24 A At the police department.

25 Q Old annex building?

1 A Yes.

2 Q And about what time, what time of day was that, do
3 you remember?

4 A 6:00 p.m. or so.

5 Q All right. And what time were you awoken by Mr.
6 Lewis that morning with Victim ?

7 A Early morning hours, very early.

8 Q So you had been up all that time?

9 A Yes.

10 Q And had you gone to sleep at any time?

11 A Just a nap that I had with the kids earlier that day
12 around 3:00.

13 Q I am talking about from the time he had woke you up
14 those early morning hours until you met with Agent
15 Kirkland at the Laurens County Sheriffs Office, had you
16 been asleep?

17 A Yes, for an hour or two, I don't know how long.

18 Q Where did you sleep at?

19 A In my bed.

20 Q Listen to me now, listen to my question. After
21 Brandon had woke you up with Victim , the early morning
22 hours of October 13th, she was taken to the hospital.
23 When you spoke to Agent Kirkland that night at 6:00
24 o'clock at the sheriffs office, had you been asleep that
25 day?

1 A No.

2 Q Okay. You were talking about when you had been
3 asleep--

4 A The previous day.

5 Q How much had you gotten before Brandon woke you up
6 holding Victim ?

7 A Two to three hours, maybe a little more.

8 Q And prior to that you had taken a nap with the kids?

9 A Correct.

10 Q On October the 12th of 2009?

11 A Correct.

12 Q So, over the previous couple of days how much sleep
13 had you had before you had a chance to sit down and talk
14 to Agent Kirkland?

15 A I got two hours during the nap with the kids that day
16 and a couple of hours after I put Victim and Owen to bed.
17 So, four hours, maybe a little bit longer, give or take.

18 Q And when you spoke with her, Victim again was
19 obviously in the hospital?

20 A In the hospital.

21 Q Where was your mind then?

22 A On Audrina.

23 Q And you were sleepy?

24 A Very tired.

25 Q Where did you want to be?

1 A In the room with Victim .

2 Q And you were down here at the sheriffs office?

3 A Correct.

4 Q Now, there has been discussion, a lot made about your
5 saying that she had a bruise on her stomach and a bruise
6 on her chin. October 12th of 2009 when you put Victim
7 and Owen in the bathtub what bruises did she have on her?

8 A Just the slight bruise on her forehead.

9 Q And said something about some shin bruises?

10 A And some shin bruises.

11 Q When you spoke with Agent Kirkland what were you
12 referring to as far as the chin bruise and the stomach
13 bruise?

14 A Just what I had seen in the hospital.

15 Q And where was that, when did you first notice those
16 bruises on her?

17 A In Greenville Memorial Hospital.

18 Q The towel, how did that towel get into Victim bed?

19 A I don't know.

20 Q Was it in there when you put her in the bed?

21 A No, it was not.

22 Q Mr. Wise had asked you about slapping Brandon the day
23 of October 12th, did you slap Brandon?

24 A No.

25 Q You mean, there was some discussion about hitting him

1 with a pillow or something?

2 A Yes, that was playfully.

3 Q Were you upset that night, October 13th, was there
4 anything to upset you?

5 A No.

6 Q You had had this discussion with Brandon about not
7 disciplining your children. But were you upset with your
8 children in any way?

9 A No, not at all.

10 Q The episode about brushing the teeth, was that
11 something that would upset you?

12 A No, not at all. We were just, it took like fifteen
13 minutes to do something that should have only taken a
14 minute or less.

15 Q What kind of relationship did you have, or do you
16 have with Owen?

17 A Very good relationship.

18 Q When you would normally have to have him do something
19 and he wouldn't do it how did you remedy that?

20 A I would get down on his level and talk to him.

21 Q Let me see your fingernails. Now, how do you usually
22 wear your fingernails?

23 A My fingernails don't grow, they break off, they tear.

24 Q And this about in the summer of '09 you had
25 fingernails?

1 A Yes, false nails put on.

2 Q And how long were those there?

3 A A week or two, just long enough for the event and
4 then for them to come off with wear.

5 Q And is that something you do customarily, put on
6 false nails?

7 A No, I can't stand them.

8 Q Why would you have them on then?

9 A Because I was going to an event and it looked nice
10 with my dress.

11 Q Now, you were asked again about when you spoke to
12 Agent Kirkland about the statement attributed to you about
13 not putting this past Daniel. Is that the question you
14 were asked, would you suspect your husband of doing
15 something like this?

16 A No.

17 Q Do you remember what it was you were asked?

18 A I am not sure exactly what I was asked. I know the
19 conversation was just asking who could have done this, who
20 was in, or who all could have entered the house, you know,
21 that kind of thing.

22 Q Did you ever say you didn't put it past Daniel to do
23 something like that?

24 A No, I did not.

25 Q That is all I have of this witness.

1 THE COURT: Anything on recross, Ms. Mayes?

2 MS. MAYES: Yes sir, Your Honor.

3 RECROSS-EXAMINATION

4 By Ms. Mayes:

5 Q Now, you state that you were being asked questions
6 like, who all could enter the house, correct?

7 A Correct.

8 Q And that is because at this point law enforcement has
9 gotten involved, it is less than twenty-four hours from
10 the event, correct?

11 A Correct.

12 Q We are talking about your daughter being injured in
13 the early morning hours of October 13th and then the next
14 day, you are at Greenville Hospital and Lieutenant Plaxico
15 approaches at Greenville Hospital, and asked you to come on
16 back to Laurens County for interviews, correct?

17 A Correct.

18 Q Let's develop a timeline of who you spoke with and
19 when. On the early morning hours of October 13th it
20 starts out where EMS arrives at your house, then your
21 daughter is taken to Self Hospital in Greenwood, correct?

22 MR. ABLE: Your Honor, I am going to object to all of
23 this, I don't think this is recross.

24 THE COURT: All right, Ms. Mayes.

25 MS. MAYES: This is leading to--

1 THE COURT: Overruled at this time, subject to her
2 linking it up to something that was addressed by either
3 you or Mr. Wise.

4 Q And at Self Hospital in Greenwood you spoke with Dr.
5 Curry, correct?

6 A Correct.

7 Q And was advised that your daughter's injuries were
8 due to child abuse and then you go on to Greenville
9 Memorial Hospital, correct?

10 A Spoke with Plaxico at the hospital as well.

11 Q So you go from Greenwood to Greenville Memorial and
12 at Greenville Memorial you had Dr. Crosswell asking you
13 questions and we will get back to that in a moment. But
14 while you are there at Greenville Memorial, in addition to
15 Dr. Crosswell asking questions you had Calvin Hill from
16 the Department of Social Services there to ask you
17 questions, right?

18 A Correct.

19 Q We will put down DSS, Calvin Hill. And then while
20 you were there on October 13th Lieutenant Plaxico asked
21 you to come on back to Laurens County because he would
22 like to interview you and officers there would like to
23 speak to you, correct?

24 A Correct.

25 Q So, you went in Greenville Memorial and you go to the

1 Laurens County Sheriffs Department. And there at the
2 Laurens County Sheriffs Department that is when you were
3 interviewed by the State Law Enforcement Division and also
4 by Lieutenant Plaxico, correct?

5 A Correct.

6 Q I am going to put SLED and I am going to put
7 Lieutenant Plaxico. And when you got here to the Laurens
8 County Sheriffs Department the first thing they did is
9 they read you your Miranda Warnings, right?

10 A Right.

11 Q So you knew you were being interviewed by law
12 enforcement about anything relevant to this case?

13 A I did.

14 Q Now, one of the things that Mr. Able was asking you
15 about was when you talked to Dr. Crosswell and I believe
16 your testimony a few moments ago is that you had just
17 forgotten to tell her about this last time you saw your
18 daughter, correct?

19 A Correct.

20 Q You were aware from Dr. Curry that this is child
21 abuse, when you first arrived at Greenville Memorial even
22 before you spoke to Dr. Crosswell, Dr. Seigler, the
23 medical director, he spoke with you there, didn't he?

24 A Correct. He informed me of her condition.

25 Q And part of what he informed you of was again, that

1 her injuries were related to child abuse, correct?

2 A Correct.

3 Q And part of what Dr. Crosswell did when she met with
4 you is to try and get a history and this history that was
5 being provided about Victim, what could have happened to
6 her was coming primarily from you, wasn't it?

7 A Correct.

8 Q Because even though your mom was there--

9 MR. ABLE: Judge, I am going to raise an objection.
10 This is not recross.

11 THE COURT: I feel like we are maybe getting a little
12 far afield, can you perhaps run it back in a little bit,
13 Ms. Mayes.

14 MS. MAYES: Yes sir, Your Honor.

15 Q The story that she was getting was primarily from you
16 and that history was about what condition Victim was in
17 that night, correct?

18 A Correct.

19 Q And you went through a whole series of events in
20 talking with Dr. Crosswell, you talked to her about her
21 state of health and that she appeared normal and about her
22 appetite, everything leading up to you giving her Orajel
23 that night, correct?

24 A Correct.

25 Q And you stated that after you gave her Orajel Mr.

1 Lewis came in and asked you if you wanted to watch a movie
2 or wanted something to eat?

3 A Correct.

4 Q And then the next thing you reported was him being in
5 your room with Audrina, correct?

6 A Correct.

7 Q So there is no question that she wanted a history
8 about what could have happened to Audrina during those
9 critical final hours of her life?

10 A Correct.

11 Q All right. Now, after you spoke with Dr. Crosswell,
12 you had a conversation with Calvin Hill. Part of what you
13 stated to Calvin Hill with DSS is that the same context of
14 you telling Calvin Hill about your daughter having bruises
15 over the course of the last two to three weeks that she
16 was noticed and you didn't know how they got on her--

17 MR. ABLE: Judge, the same objection, this is not
18 recross.

19 THE COURT: I believe this line of questioning was
20 touched on, if my memory serves me correctly. Go ahead
21 and finish the question, Ms. Mayes.

22 MS. MAYES: Yes sir, Your Honor.

23 Q In addition to you telling Calvin Hill about the
24 fingerprint bruise, in that same conversation is when you
25 stated that your daughter was afraid to be around Brandon

1 Lewis?

2 A Yes.

3 Q Then when you got to the sheriffs department and
4 spoke with Lieutenant Plaxico and Mr. Wise questioned you
5 about the conversation with Lieutenant Plaxico, correct?

6 A Correct.

7 Q And he questioned you about the conversation that you
8 had with the SLED agents there?

9 A Correct.

10 Q You never mentioned to them anything about your
11 daughter being scared of Brandon, did you?

12 A I am not sure if I did, I want to say I did.

13 Q You want to say you did?

14 A Everything that I said, I wasn't allowed to make a
15 statement.

16 Q You weren't allowed to make a statement?

17 A No.

18 Q You had the opportunity to provide a written
19 statement to the State Law Enforcement Division?

20 A I did not.

21 Q You deny that?

22 A Yes.

23 Q And during the conversation with the State Law
24 Enforcement Division you gave them detailed information, I
25 think you have been questioned about that thoroughly, but

1 part of what they wanted to know was who all had been in
2 the house, who had access to your daughter, correct?

3 A Correct.

4 Q Who all can come and go from your house. And you
5 make it clear that the only people in your house were
6 Owen, your mom and your mom's boyfriend and that they were
7 asleep this night, correct?

8 A And Brandon.

9 Q And Brandon. And that your mom and her boyfriend,
10 David Crumley had been to sleep long before Victim was
11 injured, correct?

12 A Correct.

13 Q And when you spoke about Brandon, not one time did
14 you report to this SLED agent or to Agent Hurt that your
15 daughter didn't want to be around Brandon, did you?

16 A I am not sure.

17 Q You are not sure. All right. I just wanted to make
18 clear. And when you spoke with Lieutenant Plaxico, I
19 believe Mr. Wise asked you about that, he showed you a
20 statement, didn't he?

21 A Yes.

22 Q And after showing you that statement still at no time
23 did you state to Lieutenant Plaxico that your daughter was
24 afraid of Brandon Lewis, did you?

25 A I am not sure.

1 Q Okay, not sure. But when you were traveling to
2 Greenville Memorial in the early morning hours of October
3 13th of 2009 you were already telling family members that
4 Audrina was scared of Brandon and you should have figured
5 it out?

6 A I didn't have to tell family members, they noticed
7 it.

8 Q So basically everybody in your family including you
9 knew that Victim was afraid of Brandon?

10 A That she had, that she cried when he was around.

11 Q That she didn't want to be around him?

12 A Correct.

13 Q And that was something that you discussed with your
14 family members because they already knew just like you on
15 the way to Greenville Hospital, correct?

16 A I am not sure if we discussed on the way.

17 Q But there is no doubt according to you that it was
18 well known in your family?

19 A Everybody knew that or a lot of them knew that she
20 cried when he was around, yes.

21 Q And I believe your testimony was that the one and
22 only time you had your nails done was the time that was in
23 the photograph that I showed you and that was the half and
24 half photograph with the long black tips and the clear at
25 the base, correct, that photograph?

1 A Yes.

2 Q And do you recall when you returned from Washington
3 in February of 2009 that you had your nails manicured with
4 the long tips, they had been your nails. I am not
5 implying they were--

6 A Might have been my nails.

7 Q Okay. So, that wasn't unusual, was it? So when you
8 said it was unusual for you to have long nails you are
9 referring to long artificial nails, you are not
10 necessarily referring to your nails, correct?

11 A Well, my nails will break off so it was unusual for
12 me to have longer nails.

13 Q Let me show you a photograph and ask you if you
14 recognize it.

15 A Yes, I do but I can't see the nails on it though.

16 Q All right. Who is in the photograph?

17 A I am, that is Halloween at work.

18 Q And these were your nails, those aren't artificial
19 nails?

20 A I cannot see the detail of the nail.

21 Q You can't tell whether or not you had fingernails in
22 this photograph?

23 A I have fingernails on my fingers, I can't tell the
24 length of them.

25 Q But there is no doubt that is you in the photograph?

1 A That is me.

2 Q And when you say it was Halloween at work?

3 A Yes.

4 Q And what work place are you speaking of?

5 A Hooters.

6 MS. MAYES: Your Honor, at this time the State would
7 offer as exhibit, I believe 65.

8 THE COURT: Show it to them and then let me see it,
9 if you would. This is State's 65.

10 MR. ABLE: Judge, I object. Obviously this, October
11 of 2008.

12 THE COURT: There were two instances where she had
13 long nails.

14 MS. MAYES: Yes sir, Your Honor.

15 THE COURT: I will allow it into evidence for what it
16 is worth, it is certainly not the clearest picture but I
17 believe that would go to the weight, not the
18 admissibility. It will be in evidence as State's 65,
19 subject to Mr. Able's objection under 403.

20 (Whereupon, State's Exhibit 65 was admitted into
21 evidence.)

22 Q So these would be your fingernails in this
23 photograph, correct, those are not artificial nails?

24 A No, they are not.

25 Q Okay. Now, what I want to ask you about, your

1 previous testimony where Mr. Wise was asking you about a
2 series of events that happened and this is after you
3 learned that your daughter had been injured and when you
4 spoke with SLED, you said the first thing you remembered
5 was being in the hallway, correct?

6 A. I am not sure what I told them.

7 Q Do you recall what you testified to just a few
8 moments ago on cross-examination with Mr. Wise?

9 A Yes.

10 Q At that point you agree that when you spoke with them
11 you stated that the first thing that you remember was
12 being in the hallway, correct?

13 A Correct.

14 Q And he asked you whether or not you had gone to the
15 bathroom after you learned your daughter was injured?

16 A Correct.

17 Q In other words, did you leave the bedroom and go into
18 the bathroom and then at that point take your daughter in
19 the hallway?

20 A What are you asking me, if I went to the restroom?

21 Q Right.

22 A No, I did not.

23 Q Okay. So, when you took Audrina, your testimony is
24 when you took Audrina from Mr. Lewis' arms that was while
25 you were standing in the hallway, correct?

1 A He met me in the room and I walked out into the
2 hallway.

3 Q Nothing further.

4 MR. WISE: Nothing further.

5 MR. ABLE: No, sir.

6 THE COURT: Ms. Hepburn, thank you very much and you
7 can step down. Ladies and gentlemen of the jury, we have
8 been at it for over two hours, we are going to take a
9 break. Don't talk about the case and we will see you
10 about 11:30. You are excused to the jury room.

11 (Whereupon, the jury was excused from open court for
12 a break.)

13 THE COURT: The jury is out, Mr. Wise, you had an
14 objection that you needed to put on the record. At
15 sidebar I told you I would give you a chance to do so.

16 MR. WISE: Correct. I introduced defendant's exhibit
17 2 for identification. I think I should have been
18 permitted to cross-examine her fully about the contents of
19 that statement because having reviewed it and commented,
20 having her review it and based upon the testimony I think
21 I would be entitled to cross-examine her, on her about her
22 when she said all of this is true. What it boils down to,
23 Your Honor, and we will get to this later and I will have
24 to address on the record too but I will address it now.
25 Under the Court's ruling, in order to impose my third

1 party defense I am going to have to put Mr. Lewis on the
2 stand. I don't think, I would like to present a third
3 party defense should it, intended upon my having to put my
4 client on the stand. But I understand the way the case is
5 being tried, them together. Because the other problems in
6 Bruton and Crawford, that is not going to happen. But I
7 think this sum and substance of the ruling of the Court is
8 in order for Mr. Lewis to present his third party defense
9 he is going to have to take the stand.

10 THE COURT: Mr. Wise, I again, we have traveled this
11 road several times, it is the old, it is a little mind
12 bender thing where you have a situation, two people are in
13 a room, three people are in a room and you hear a shot,
14 you walk in and there are a few guns on the table and one
15 person is dead. One of the two in the room shot the
16 person. In order to present evidence that you were one of
17 the two that survived, the only option to present a
18 defense is to in fact take the stand, sir. I don't know
19 any other way around that. I am not obviously making
20 sense to you.

21 MR. WISE: If we were being tried separately I think
22 I could put this in with no problem.

23 THE COURT: Right, we have crossed that bridge
24 several times and I am not sure I would necessarily agree
25 with you that being tried separately would automatically

1 be okay, that the entire statement would automatically be
2 admissible and then we have other issues regarding hearsay
3 and the Court has addressed on several times. So, I am
4 not going to belabor the point again. And but of course I
5 appreciate your objection. It is overruled and that is
6 the reason I didn't let you go into it and I also felt it
7 wasn't proper for your client to be able to present that
8 at that point and time for the reasons that I have
9 previously explained. We will be at ease for a few
10 minutes and I will see y'all back in here in about five
11 minutes or so.

12 (Whereupon, a short break was taken.)

13 THE COURT: Anything before we bring the jury in.

14 MR. ABLE: Your Honor, before we bring the jury back
15 in, the next witness that I will call is Dee Deal who had
16 testified in the State's case.

17 THE COURT: Yes, sir.

18 MR. ABLE: He had testified to some notes that he had
19 taken on the morning hours of October 13th of 2009, we had
20 discussed previously, I think at the bench. I don't know
21 if it was on the record, that you would instruct to the
22 jury in some fashion as to why the witness may not have
23 been able to testify previously or testified in part.

24 THE COURT: Here is what I came up with, gentlemen
25 and Ms. Mayes, feel free to critique this issue if you

1 choose to. I was basically going to tell them that you
2 have previously heard testimony concerning statements that
3 this witness gave to, I guess this witness took from
4 another witness, at the time of that testimony concerning
5 these statements, at the time of the testimony about these
6 statements were elicited the rules of evidence prohibited
7 introduction of the entire statement until later in the
8 trial but it is now proper for this witness' entire
9 statement to be discussed. I will tell you this because I
10 don't want you to have any impression, anyone involved in
11 this case was trying to prevent introduction of these
12 statements because that simply is not the case. That is
13 what I was going to say, if y'all have suggestions or add
14 to it, I was trying to keep it short, simple and to the
15 point. Anything that you care for me to add or detract
16 from that, Mr. Able?

17 MR. ABLE: I don't believe so, Your Honor..

18 THE COURT: The question is when I should tell them
19 that. Tell them that immediately after you call the
20 witness. Just say I have been advised that this witness
21 is going to testify as to a certain statement that was
22 given then tell them what I just told y'all. Why don't we
23 do that.

24 MR. ABLE: That sounds appropriate.

25 THE COURT: No objection from the State concerning

1 that, Ms. Mayes?

2 MS. MAYES: None from the State, Your Honor.

3 THE COURT: Let's have the jury back in, please. And
4 this is the statement, Mr. Able, that your client made to
5 Mr. Deal.

6 MR. ABLE: The statement that she had given and
7 discussions.

8 (Whereupon, the jury came into open court at
9 approximately 11:40.)

10 THE COURT: The record will reflect that the jury has
11 returned, they are all present. Mr. Able, call your next
12 witness, please.

13 MR. ABLE: Judge, we would like to call Mr. Deal back
14 on the stand.

15 THE COURT: Mr. Deal, I will advise you that you are
16 still under oath on your previous testimony from last week
17 and you are still under oath.

18 MR. DEAL: Yes sir, thank you.

19 THE COURT: Now, ladies and gentlemen, I have been
20 advised that this witness is going to testify concerning a
21 statement, a portion of which you have heard about last
22 week in which this witness, which this witness took from
23 another witness in this case. At the time that this
24 statement, that portion of the statement was given to you,
25 at the times that these statements were first elicited the

1 rules of evidence prevented introduction of the entire
2 statement until later in the trial. But it is now proper
3 for this witness, for the entire statement to be
4 introduced or discussed. I am telling you this because I
5 don't want there to be any perception that anyone was
6 trying to prevent introduction of these statements because
7 that is simply not the case. It is simply a matter of
8 law, it is a rule of law that the entire statement could
9 not come in at that point in the trial. We are not at the
10 point where it is proper to hear the entire statement.
11 So, with that, Mr. Able, if you will continue.

12 DIRECT EXAMINATION

13 By Mr. Able:

14 Q Mr. Deal, you testified last week, I believe,
15 correct?

16 A Yes, sir.

17 Q And you are employed with the South Carolina
18 Department of Social Services?

19 A I am.

20 Q And did you, I believe you described as the on call
21 worker on the morning of October 13th of 2009?

22 A That is correct.

23 Q And you upon receiving a call you went to Self
24 Regional Hospital in Greenwood?

25 A I did.

1 Q And there you met with my client, Ashley Hepburn and
2 law enforcement?

3 A I did.

4 Q And as a result of that conversation did you make
5 notes of what you heard?

6 A Yes, sir.

7 Q And you prepared, I believe a part of your job duties
8 you prepare a memorandum or a dictation of those notes in
9 your meeting?

10 A I did.

11 Q You also had an opportunity on those morning hours of
12 October 13th of 2009 to speak to Mr. Richard Brandon
13 Lewis, correct?

14 A I did.

15 Q And did you make notes of that conversation and what
16 was said?

17 A Yes, sir.

18 Q Now, you are referring to your dictation, correct?

19 A Yes, sir.

20 Q All right. You responded to Self Regional Hospital
21 and you met with the Laurens County Sheriffs, Detective
22 Plaxico and Ben Blackmon?

23 A Yes, sir.

24 Q And you spoke with Ms. Hepburn first?

25 A Yes, sir.

1 Q You were there when Ms. Hepburn spoke with law
2 enforcement?

3 A I was.

4 Q And what did Ms. Hepburn say during that interview?

5 A She basically said that the, she had put her other
6 child, Owen, to bed about 10:00 o'clock. I mean, I am
7 sorry, she had put Victim to bed about 10:00 p.m., and
8 that the child was irritable and was crying. She said
9 that she had gone to bed about 10:30 with her other child,
10 Owen. She had also said that her mother and her mother's
11 boyfriend had gone to bed earlier. She stated her
12 boyfriend, Richard Brandon Lewis was the only one up and
13 found the child unresponsive. She stated that she had no
14 idea what had happened to Victim.

15 Q After that you and law enforcement then had an
16 opportunity to go and speak with Mr. Lewis, correct?

17 A That's correct.

18 Q And what was the substance of that conversation?

19 A He had stated that he had arrived at the residence
20 about 8:30 p.m. He said Doris Davis and David Crumley had
21 already gone to bed. He said he was watching Monday night
22 football and Ashley put Victim to bed around 10:00 p.m.
23 He said she was crying. He said Ashley and her other
24 child, Owen, went to bed right after that and Richard said
25 about 11:30 p.m. he checked on Victim and she was fine.

1 After the football game the movie Congo was coming on TV
2 and he went and woke up Ashley to see if she wanted to
3 watch it. Ashley said no and he watched some of the
4 movie. He said he went back in to check on Victim and
5 found her unresponsive and EMS was called.

6 Q All right, sir. Thank you, Mr. Deal.

7 CROSS-EXAMINATION

8 By Ms. Mayes:

9 Q Just to clarify where we were before. I think when
10 you previously testified you explained that your
11 conversation with Ms. Hepburn and also with Mr. Lewis
12 occurred at Self Hospital in Greenwood?

13 A Yes.

14 Q And that would have been in the early morning hours
15 of October 13th?

16 A Yes, ma'am.

17 Q I think your testimony was around 3:00 a.m. or so?

18 A Around that, yes ma'am.

19 Q While you were interviewing both Ms. Hepburn and then
20 later Mr. Lewis law enforcement was present, correct?

21 A That is correct.

22 Q In fact they were kind of conducting the questions
23 and you were making notes as they went?

24 A That's correct.

25 Q I believe when you last spoke to us about the

1 interview was it that they really just wanted to kind of
2 know, were you and law enforcement really trying to find
3 out what condition she had been, what condition Victim
4 had been in?

5 A We were informed by the doctor when, before the
6 interviews took place what condition she was in. In fact,
7 we was informed that she had already been taken to
8 Greenville Memorial Hospital.

9 Q Okay. So, y'all were well aware that this child
10 abuse concerning Audrina and at that point it was
11 necessary to learn what, if anything, the caregivers which
12 would be Ms. Hepburn and Mr. Lewis had to add, is that
13 correct?

14 A Yes, ma'am.

15 Q And according to what Ms. Hepburn told you that she
16 had put Victim down around 10:00 a.m., correct?

17 A 10:00 p.m.

18 Q I am sorry, 10:00 p.m.

19 A Yes, ma'am.

20 Q And she also reported to you that Victim was
21 irritable and crying at the time, correct?

22 A Yes, ma'am.

23 Q And then she reported that she had gone to bed around
24 10:30 p.m. following that, correct?

25 A Yes, ma'am.

1 Q Where it says 10:30 a.m., that is actually 10:30
2 p.m., correct?

3 A Yes, ma'am.

4 Q And part of what everybody needed to know was when
5 was the last time they had seen **Victim** healthy, correct?

6 A Yes, ma'am.

7 Q And at that point and time Ms. Hepburn didn't mention
8 anything about giving her daughter Orajel?

9 A No.

10 Q And she didn't report anything at all to you or the
11 officer about after she had put her to bed at 10:00 p.m.
12 she went back into the room to retrieve a book, did she?

13 A No, ma'am.

14 Q And that she had observed her daughter at that point
15 and time and she appeared to be healthy?

16 A No, ma'am.

17 Q So, as it was reported to y'all she put her, her
18 child to bed around 10:00 p.m. and she was irritable and
19 was crying some?

20 A Yes, ma'am.

21 Q And then the next she reported to y'all is that Mr.
22 Lewis advised her the child had been injured?

23 A Yes, ma'am.

24 Q Nothing further.

25

CROSS-EXAMINATION

1 By Mr. Wise:

2 Q Let me see your statement for one second. You were
3 there during this conversation with the officers involved?

4 A I was, at the hospital.

5 Q Right, at the hospital?

6 A Right.

7 Q And was the doctor also in the room when the officers
8 were there?

9 A With Mr. Lewis?

10 Q Well with Ms. Hepburn and Mr. Lewis?

11 A I never saw the doctor with Ms. Hepburn or Mr. Lewis.

12 Q Okay. So, the information about the nature of the
13 injuries to the child were related to Ms. Hepburn and Mr.
14 Lewis through the law enforcement agents?

15 A I don't know, if they had been informed previous
16 before I got there but I know the law enforcement
17 explained to Ms. Hepburn and Mr. Lewis the condition of
18 the child.

19 Q And you have got a comment in there about a
20 fingernail mark on the back and that came from law
21 enforcement?

22 A No, that came from the doctor.

23 Q From the doctor, so you talked to the doctor too?

24 A I was present when she was--

25 Q And the doctor came in and talked about a fingernail

1 mark on the back?

2 A Yes.

3 Q And talked about possible shaken baby?

4 A Yes.

5 Q And probably a case of child abuse?

6 A Yes.

7 Q Now, was Ms. Hepburn present when the doctor was
8 saying all of this?

9 A No.

10 Q Did you, when you were in the presence of Ms. Hepburn
11 being questioned by the officers did they mention those
12 facts to Ms. Hepburn?

13 A I don't recall if they said anything about the
14 bruises, I don't recall that. I do know they told her the
15 condition of the child.

16 Q They told her the condition of the child?

17 A Right.

18 Q And told her it was possible child abuse?

19 A Shaken baby, yes.

20 Q And she made no derogatory comment about Brandon
21 Lewis at that time, did she?

22 A No.

23 Q Thank you.

24 REDIRECT EXAMINATION

25 By Mr. Able:

1 Q Mr. Lewis did tell you that Audrina didn't like him
2 and that she would cry when he was around?

3 A Yes.

4 Q That is all I have.

5 THE COURT: You can step down, thank you very much.
6 Mr. Able.

7 MR. ABLE: We call Calvin Hill. May we approach
8 while he comes in?

9 THE COURT: Yes.

10 (Whereupon, a bench conference was held in the
11 presence of the jury but out of the hearing of the
12 jury.)

13 THE COURT: Mr. Hill, you are still under oath from
14 your testimony last week, sir, so do consider yourself
15 under oath. Ladies and gentlemen, this witness has been
16 called to relate to you a statement taken from parties
17 involved in this case. And, again, at the time of the
18 testimony about these statements was received by you last
19 week, at the time it was first elicited, the rules
20 prohibited an introduction of the entire statement until a
21 later date. Now it is proper for this witness' entire
22 statement that he took from one of the individuals or both
23 individuals to be discussed. I don't want you to have an
24 impression that anyone was trying to keep this out, again
25 it was an evidentiary matter that I had to rule upon.

1 Now, is the proper time for us to hear the full statement.

2 Mr. Able, you may continue. "

3 DIRECT EXAMINATION

4 By Mr. Able:

5 Q Mr. Hill, you testified last week, correct?

6 A Yes, sir.

7 Q And you are employed with the South Carolina
8 Department of Social Services, correct?

9 A Yes, sir.

10 Q Here in Laurens?

11 A Yes, sir.

12 Q And you were assigned to the case involving Victim
13 the morning, I believe you testified on the morning of
14 October 13th of 2009?

15 A Correct, sir.

16 Q And upon your being assigned this case you traveled
17 to Greenville Memorial Hospital to start your
18 investigation?

19 A Correct, sir.

20 Q And at that time you had an opportunity to meet with
21 Ashley Hepburn, correct?

22 A Yes, sir.

23 Q And that was at the hospital?

24 A Yes, sir.

25 Q You began talking to her about the events leading up

1 to this incident?

2 A Yes, sir.

3 Q And you took notes of that incident, of that
4 interview, correct?

5 A Yes, sir.

6 Q And you prepared dictation from those notes?

7 A Yes, sir.

8 Q And that is from your record?

9 A Correct, sir.

10 Q And you have that statement with you?

11 A Yes, I do.

12 Q Now, how did, where did you meet her at?

13 A In the waiting room at Greenville Memorial Hospital,
14 sir.

15 Q And when you met her you introduced yourself, what
16 did the conversation or the interview entail from that
17 point?

18 A I did basically introduce myself to her, I told her I
19 was Calvin Hill from Laurens County DSS. And that DSS had
20 opened an investigation now and I would be investigating
21 the case for the Department of Social Services. And I
22 asked her could she explain to me what happened to
23 Victim.

24 Q And what did Ashley tell you at that point?

25 A She basically told me that they had dinner around

1 7:30 and about 9:00 o'clock she gave the kids a bath.

2 Then she stated that Brandon came over about 8:30, he

3 helped her dress the kids and put them to bed. And she

4 stated after that--

5 Q You stated that she, Brandon helped her dress the

6 kids and put them to bed?

7 A She said that she gave them a bath and he came over

8 about 8:30 and helped her dress the kids and put them,

9 helped her put them to bed.

10 Q Dressed before bed?

11 A Yes, sir.

12 Q What else did she say?

13 A She said **Victim** was a little fussy but she put her

14 in the crib around 9:30, 9:45. She said after that she

15 read Owen, that is her son, a bedtime story. And they

16 fell asleep.

17 Q All right.

18 A And then after that she said Brandon woke her up and

19 asked her did she want to watch a movie. And Ashley

20 stated that she stated no and fell back off to sleep. And

21 she stated that she woke up later to Brandon holding

22 **Victim** in his arms unresponsive. She said she asked

23 Brandon, Ashley said that Brandon found her this way in

24 the crib.

25 Q Who said, who said what there?

1 A Ashley said Brandon found her this way in the crib.
2 And Ashley informed me that she grabbed Victim from
3 Brandon and her head fell back in her arms and she
4 hollered for Audrina to wake up. She said she ran into
5 the living room where her mother gave Victim two quick
6 breaths and she asked her mother's boyfriend, David
7 Crumley, to call 911. She mentioned that EMS arrived
8 about fifteen minutes later and took Victim to Greenwood
9 Self Regional Hospital.

10 Q Go ahead.

11 A Ashley said that Brandon told her, Ashley said
12 Brandon told her that Victim may have had a seizure
13 because she had blood on her lip. Ashley informed me that
14 she was told at the hospital that Victim was in serious
15 condition. I asked Ashley how did Victim and Brandon get
16 along. Ashley said that, Ashley stated to me that Audrina
17 did not like Brandon. I asked Ashley, Ashley said that
18 Victim liked Brandon at first but the last two or three
19 months she did not want to be around him. Ashley said
20 that she thinks that she, she thought that was kind of
21 strange. I asked Ashley well did she think that was kind
22 of strange and she told me no. After I asked, Ashley told
23 me that when Brandon, Ashley said that when Brandon was
24 around she did not want to go to sleep. I asked Ashley
25 how long her and Brandon had been dating, she said about

1 six months. I asked Ashley how often did Brandon spend
2 the night at her home, she said about two to three nights
3 a week.

4 Q Go to where it says, Ashley informed that last two to
5 three weeks she had noticed bruises.

6 A Okay. Ashley informed me that the last two or three
7 weeks that she had noted bruises on Victim and she did
8 not know, you know, how they got on her. Ashley said
9 Victim had a fingerprint bruise on her forehead and chin
10 and had a rash around her neck. CW asked did she take
11 Victim to the doctor and Ashley replied, yes. And Ashley
12 said that the doctor said that it was not a rash around
13 Victim neck but broken blood vessels. CW had asked do
14 she know how it happened. Ashley stated she did not know
15 how it happened. CW had asked had she noted any bruise on
16 Owen. Ashley replied, no. CW asked Ashley do Owen and
17 Brandon get along. Ashley stated, yes. CW asked Ashley
18 did she allow Brandon to discipline her kids. Ashley
19 replied, no. Ashley informed CW that she had found, that
20 she had found Brandon at nighttime just holding Victim
21 while she was asleep and while she was asleep, after she
22 had put her in her crib and didn't think anything of it.
23 CW had asked who was Victim doctor and she informed CW
24 that Victim goes to the Children's Center in Greenwood.
25 Q All right, thank you, sir.

CROSS-EXAMINATION

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By Ms. Mayes:

Q Good morning, Mr. Hill.

A Good morning.

Q I am going to refer to your testimony previously when you spoke with us last week. And just to make clear about where you fit in in the timeline when you would have had contact with Ms. Hepburn. That actually occurred at Greenville Memorial, didn't it?

A Yes, ma'am.

Q So, I believe first she had spoke with DSS which would be Dee Deal while she was at Self. And then once Victim was transferred to Greenville you drove up to Greenville as part of the investigation and met with Ms. Hepburn there, correct?

A Yes, ma'am.

Q And this would have been before she left Greenville Hospital to come to Laurens and speak with law enforcement?

A Correct, ma'am.

Q All right. And according to what we talked about last week and what you just mentioned she testified that Brandon Lewis had arrived at about 8:30?

A Yes, ma'am.

Q He helped her dress the kids for bed?

1 A Yes, ma'am.

2 Q Then she also testified that she had put Victim in
3 her crib about 9:30 or 9:45?

4 A Correct.

5 Q She told you that Brandon had come in and asked if
6 she wanted to watch a movie?

7 A Yes, ma'am.

8 Q And did she tell you anything about, about after
9 putting Victim in her crib that she had gone in there to
10 give her Orajel?

11 A No, ma'am.

12 Q Did she ever report to you that the last time she had
13 seen her daughter was when she had gone in to get a book
14 and her daughter turned her head to look at her?

15 A No, ma'am.

16 Q Were you asking at any point about the last time she
17 had seen Victim and what condition she was in?

18 A Yes, ma'am.

19 Q And during that conversation, during that
20 conversation with Ms. Hepburn she starts telling you about
21 the fact that during the last two to three weeks she had
22 noticed bruises on Victim, correct?

23 A Yes, ma'am.

24 Q And you actually made specific notes about that in
25 your notes, didn't you?

1 A Yes, ma'am.

2 Q And in your notes you reported that during the last
3 two to three weeks, according to her, she had seen a
4 fingerprint bruise on her forehead, her chin and then what
5 she called a rash around her neck, correct?

6 A Yes, ma'am.

7 Q Mr. Hill, were you asking her about injuries that she
8 had seen on [Victim] before [Victim] got in the hospital or
9 were you asking her about the injuries of [Victim] right
10 then while she was in the hospital?

11 A I would have asked her both, if there was any
12 bruising before the hospital and at the time during the
13 incident that had happened.

14 Q All right. And what did she report to you that she
15 had before she was in the hospital?

16 A She said that she did have a fingertip bruise on the
17 forehead and she said chin and a rash around her neck.
18 That is the only time she stated to me.

19 Q And other than those bruises did she acknowledge
20 knowing how any of the bruises that were currently on
21 [Victim] V got there?

22 A No ma'am, she said she didn't know how they got
23 there.

24 Q Now, when you asked her about seeing bruises over the
25 last two to three weeks, what did she mention to you in

1 connection to noticing those bruises on [Victim]? Did she
2 mention anything about Mr. Lewis?

3 A She, the only thing she stated about Mr. Lewis is
4 that, she had woke up at nighttime and Mr. Lewis was
5 holding [Victim]. But as far as any bruises directly apply
6 to him, no ma'am.

7 Q And she also stated to you during this same
8 conversation, you asked how [Victim] and Brandon get along?

9 A Yes, ma'am.

10 Q And she stated that [Victim] doesn't like Brandon?

11 A Yes, ma'am.

12 Q And she stated that [Victim] liked Brandon at first
13 but the last two to three months she didn't want to be
14 around Brandon, correct?

15 A Correct, ma'am.

16 Q And she also stated that if Brandon was around she
17 didn't want to go to sleep, correct?

18 A Yes, ma'am.

19 Q And then when she spoke to you about these bruises
20 that she had noticed the last two to three weeks on
21 [Victim] she stated to you she did not know how they
22 happened, correct?

23 A Correct, ma'am.

24 Q Nothing further.

25 THE COURT: Mr. Wise.

CROSS-EXAMINATION

1

2 By Mr. Wise:

3 Q You tried on several occasions to talk to Brandon
4 after this incident, didn't you?

5 A Yes, sir.

6 Q And I think your schedule just prevented those in
7 taking place?

8 A Yes, sir.

9 Q Y'all scheduled a couple and you actually had to
10 leave the office before he got there?

11 A Correct, sir.

12 Q So he never avoided you or anything?

13 A No sir, he didn't.

14 Q Now, did she refer to this as a fingerprint bruise or
15 a fingerprint size bruise?

16 A My records say fingerprint bruise, sir.

17 Q If she had used the word, size, would you have
18 written that down?

19 A Yes sir, I would have.

20 Q Why would you have written that down, why would that
21 have been important to you?

22 A Because it would have been different terminology
23 bruise, sir.

24 Q Thank you.

25 THE COURT: Mr. Hill, thank you very much for coming,

1 sir. No objection to excusing, Mr. Hill?

2 MS. MAYES: No, sir.

3 MR. ABLE: No, sir.

4 MR. WISE: No objection.

5 THE COURT: You are released. Thank you very much,

6 sir. Mr. Able.

7 MR. ABLE: Judge, that is our case.

8 MR. WISE: Judge, I have got two witnesses I would
9 like to get in.

10 THE COURT: We will proceed with Mr. Wise's case.

11 Call your first witness.

12 MR. WISE: Donna Prince.

13 Donna Prince, being first duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION

16 By Mr. Wise:

17 Q Where do you live, Ms. Prince?

18 A I live on Dogwood Circle in Clinton.

19 Q In Clinton. And how do you know Brandon Lewis?

20 A He is a half-brother to my son.

21 Q And you mean, that means you were married to his
22 father at one time?

23 A Yes, sir.

24 Q When was this?

25 A We were married when I was 17, so that was quite a

1 few years ago.

2 Q Before Brandon was born?

3 A Yes, sir.

4 Q You have a son by his father?

5 A Yes, sir.

6 Q I call your attention to specifically in using the
7 calendar the State has here to August 22nd of 2009. Do
8 you remember that day?

9 A Yes, sir.

10 Q And what did you do that day, that afternoon?

11 A My grandbaby had a birthday party at the park over
12 there in front of the high school.

13 Q And how old is your grandbaby?

14 A She was eight at the time.

15 Q Did Brandon come to that party?

16 A Yes, sir.

17 Q And who did he come with?

18 A He came with Ashley and her two kids.

19 Q That would be Victim and Owen?

20 A Yes, sir.

21 Q Tell us what you observed that, first of all, how
22 long did this party last?

23 A It lasted about two hours.

24 Q Okay. Had you met Ashley before then?

25 A I had met her one time before, Brandon had brought

1 her to where I work at and he had introduced me to her.

2 Q Had you ever met the children before?

3 A No, not before that day.

4 Q Before that day did you ever see Brandon around those
5 children?

6 A No.

7 Q Tell us what you observed as far as Brandon's concern
8 and his interaction with the children?

9 A Well, when they got out of the car he come up and
10 spoke and she stood there with her pocketbook on her hand.
11 And they went to play on the swing set and stuff. Brandon
12 went over there and helped them on and off of the swing
13 set. And then when we got ready to eat cake and ice cream
14 Brandon come and got the cake and ice cream and took it
15 back over there to the kids. And the way I observed,
16 everything that was done for the kids Brandon done it.

17 Q Did any of them appear to be the least bit scared of
18 him?

19 A No.

20 Q Standoffish around him?

21 A No.

22 Q And they were there about how long?

23 A They were there probably about an hour and a half.

24 Q And during that period of time did you talk to
25 Brandon?

1 A Yes.

2 Q And did you meet the children?

3 A Yes, sir.

4 Q And did you meet the children with Brandon standing
5 there?

6 A Yes.

7 Q And what was your overall impression of the way
8 Brandon handled the two children that day?

9 A He loves children. Like I say, he done everything he
10 could for them.

11 Q Thank you. Answer any questions they may have.

12 THE COURT: Ms. Mayes.

13 MS. MAYES: Yes sir, Your Honor.

14 CROSS-EXAMINATION

15 By Ms. Mayes:

16 Q Ms. Prince, just to get clarification, what date
17 would this have been?

18 A It was my grandbaby's birthday on like the 24th.

19 Q Of?

20 A She was born on the 24th.

21 Q Of what month?

22 A August.

23 Q So it would be a time of August the 24th of 2009?

24 A Yes.

25 Q So approximately six weeks or seven weeks before all

1 of this happened?

2 A Yes, ma'am.

3 Q And you are ultimately aware of how all of this
4 occurred while Mr. Lewis was in the home with Ashley?

5 A Occurred of the child?

6 Q Of how Victim was injured?

7 A Yes.

8 Q So you were aware that Mr. Lewis was spending several
9 nights a week over at Ms. Hepburn's home?

10 A Well, I had heard but you know, I didn't--

11 Q Was this the only time that you saw them together?

12 A I saw Brandon and her together at where I work at and
13 that is the first time I seen them all four together, yes
14 ma'am.

15 Q With the children?

16 A Yes, ma'am.

17 Q On this one occasion in August. So, it appeared to
18 you that Mr. Lewis had an equal role in providing care for
19 the children on that day?

20 A Yes, ma'am. He took care of them, he put them on and
21 off the swing set and come over there and got their plates
22 and took them back, you know, and helped them eat it.

23 Q Okay. But he seemed to be in the role sort of as,
24 not only as her boyfriend but sort of as a step-dad almost
25 to the kids, is that correct?

1 A He loved them like that, yes ma'am.

2 Q Nothing further.

3 CROSS-EXAMINATION

4 By Mr. Abie:

5 Q You said he loved them like that but you only seen
6 them together that one time?

7 A Well, he loves children. That is what I am talking
8 about. He loves my grandbabies, I have got two
9 grandbabies that he spends a lot of time with.

10 Q And you only saw them together that one time?

11 A Yes, sir.

12 Q All right. And they were playing on the swing set?

13 A Yes, sir.

14 Q And this would have been, **Victim** would have been
15 about fourteen months old?

16 A Yes, sir.

17 Q And her and Owen were running around playing in the
18 park?

19 A Yes, sir.

20 Q And you are talking about the park across from
21 Clinton High?

22 A Yes sir, the old Clinton High.

23 Q Okay. And the children appeared happy and healthy?

24 A Yes, sir.

25 Q They were running around having a good time?

1 A Yes, sir.

2 Q Eating cake and ice cream?

3 A Yes, sir.

4 Q Nothing that you could see that was wrong with these
5 children?

6 A Not that I could see, no sir.

7 Q They were having a good time playing on the swings
8 and playing in the park?

9 A Yes, sir.

10 Q Nothing, no bruises or marks or anything like that?

11 A Not that I could see, no.

12 Q Thank you.

13 REDIRECT EXAMINATION

14 By Mr. Wise:

15 Q When is your granddaughter's birthday?

16 A Her birthday, she was born in August the 24th but
17 they had the party, you know, somewhere around in that
18 time.

19 Q So they had it the Saturday before?

20 A Yes, sir.

21 Q Thank you. Nothing further.

22 THE COURT: Thank you very much, Ms. Prince. You can
23 step down.

24 MR. WISE: I would like to excuse this witness.

25 MS. MAYES: No objection.

1 MR. ABLE: No objection.

2 THE COURT: You are free to go.

3 MR. WISE: I call Stephanie Womble.

4 Stephanie Womble, being first duly sworn,

5 testified as follows:

6 DIRECT EXAMINATION

7 By Mr. Wise:

8 Q Ms. Womble, where do you live?

9 A 206 Davey Street, Clinton.

10 Q In Clinton?

11 A Yes, sir.

12 Q And have you ever been in a courtroom to testify
13 before?

14 A No, sir.

15 Q We will get through it. Do you know Daniel Hepburn,
16 excuse me, do you know Brandon Lewis?

17 A Yes, sir.

18 Q How do you know Daniel, how do you know Brandon?

19 A Our parents were always friends so I have known him
20 my whole life.

21 Q And you are how old now?

22 A I am 24.

23 Q You are about the same age he is?

24 A Yes, sir.

25 Q Did you have an occasion to see him at a get together

- 1 on August the 22nd of 2009?
- 2 A Yes, sir.
- 3 Q What was the occasion then?
- 4 A The occasion was my little cousin's birthday party.
- 5 Q And your cousin was?
- 6 A Alisa Williamson.
- 7 Q Are you any kin to Brandon?
- 8 A No, sir.
- 9 Q What time did this get together start?
- 10 A I would say 2:00 or 3:00, I am not exactly sure.
- 11 Q How long were you there?
- 12 A I was there the whole time, probably an hour and a
- 13 half to two hours.
- 14 Q An hour and a half to two hours?
- 15 A Yes, sir.
- 16 Q How long was Brandon there?
- 17 A He was there the whole time with the party.
- 18 Q Was he there, who was he there with?
- 19 A He was there with Ashley, Victim and Owen.
- 20 Q And had you met Ashley before?
- 21 A I had seen her but never like personally met her.
- 22 Q How about her two children?
- 23 A No sir, I had never met them.
- 24 Q This was the first time?
- 25 A Yes, sir.

1 Q If you would please describe for us what Brandon did
2 that day concerning those two children?

3 A He took them on the swing and swung them and played
4 with them, he pushed them down the slide. When it come
5 time to eat cake and ice cream he fixed their plates along
6 with me. When it come time to bust the piñata he held
7 Owen up and let Owen swing the bat to hit the piñata.
8 Then me, him and my younger sister picked up candy for the
9 kids.

10 Q Okay. And helped to give it out?

11 A Yes, sir.

12 Q How did he get along with them?

13 A He got along with them great. They played, they sat
14 down and ate together, cake and ice cream and then like I
15 said they picked the candy up from the piñata.

16 Q Was there any indication that anybody was scared of
17 Brandon?

18 A No, sir.

19 Q What about Ms. Hepburn, what did she do during that
20 afternoon?

21 A She just stood, kept her distance from everyone
22 there. She like didn't conversate with nobody. Brandon
23 introduced her, this is Ashley, my girlfriend and these
24 are her two kids, Owen and Victim.

25 Q Did you talk to her at all?

1 A I handed her some suckers for Audrina because we had
2 extra candy from the piñata and she told me thank you but
3 that is probably the only conversation we had.

4 Q That is the only conversation you had?

5 A Yes, sir.

6 Q Thank you and answer any questions they may have.

7 CROSS-EXAMINATION

8 By Ms. Mayes:

9 Q Ms. Womble, this was the only time you observed the
10 four of them together?

11 A Yes, ma'am.

12 Q Nothing further.

13 CROSS-EXAMINATION

14 By Mr. Able:

15 Q Ms. Womble, this was like a family get together?

16 A It was a birthday party, it was family and friends.

17 Q And Ms. Hepburn didn't know anybody else there other
18 than Brandon Lewis, is that correct?

19 A Yes, sir. Well, I think her and my cousin went to
20 school together but I am not real sure about that.

21 Q She wasn't familiar with everybody at the party?

22 A No, sir.

23 Q As far as talking to them?

24 A No, sir.

25 Q She didn't know the people there?

1 A No, sir.

2 Q Now, as to the children, they appeared happy?

3 A Yes, sir.

4 Q Audrina and Owen were healthy?

5 A Yes, sir.

6 Q They were playing at the playground?

7 A Yes, sir.

8 Q On the swings and the sliding boards?

9 A Yes, sir.

10 Q You didn't notice anything about them that looked
11 like they had been hurt or anything like that?

12 A No, sir.

13 Q Appeared to be happy, normal, healthy children?

14 A Playing, outgoing, yes sir.

15 Q Happy, normal healthy children.

16 A Happy, normal healthy children.

17 Q Thank you.

18 THE COURT: You may step down. I would like to
19 excuse this witness.

20 MR. ABLE: No objection.

21 MS. MAYES: No objection.

22 MR. WISE: Call Casey Womble.

23 Casey Womble, being first duly sworn, testified
24 as follows:

25 DIRECT EXAMINATION

- 1 By Mr. Wise:
- 2 Q Where do you live?
- 3 A I live in Laurens, South Carolina.
- 4 Q And whereabouts in Laurens?
- 5 A On Bellview Church Road.
- 6 Q You live where?
- 7 A Right in front of the airport on Bellview.
- 8 Q Bellview Church Road?
- 9 A Yes, sir.
- 10 Q All right. And you are employed?
- 11 A Yes sir, at a Day Care Center.
- 12 Q And where is that located?
- 13 A It is in Clinton right near the new Subway.
- 14 Q And how long have you been employed there?
- 15 A About six years.
- 16 Q And you are how old now?
- 17 A I am 21.
- 18 Q And you have been there since?
- 19 A Since high school, yes sir.
- 20 Q Do you know Daniel, do you know Brandon Lewis?
- 21 A I do.
- 22 Q And how long have you known Brandon?
- 23 A Many years.
- 24 Q And known him since you were little?
- 25 A I have.

1 Q And how do you know him?

2 A Our parents, were' best friends and we were raised up
3 together.

4 Q Do you recall a party on August the 22nd of 2009?

5 A I do.

6 Q And where was that party held?

7 A It was held at the park by the high school.

8 Q And what was the purpose of that?

9 A Alisa's birthday party.

10 Q It was whose?

11 A Alisa Williamson's birthday party.

12 Q And you came to it?

13 A I did.

14 Q And did you see Brandon there?

15 A I did.

16 Q And who was with Brandon?

17 A Ashley, Owen and Victim .

18 Q And had you met Ashley before?

19 A No, sir.

20 Q Did you know her before that?

21 A No sir, I didn't.

22 Q So you didn't know her two children either?

23 A No.

24 Q If you would, describe for us what you observed about
25 Brandon and how he related with the two children at that

1 party?

2 A Owen was really clingy to Brandon. Brandon was
3 playing with them, Brandon and my sister were fixing their
4 plates and Brandon and my sister and I were getting their
5 kids candy. She held Victim --

6 Q Now, you are saying she, you are meaning--

7 A Ashley.

8 Q Okay.

9 A Held Audrina a couple of times but they were real
10 clingy to Brandon and he was doing more for them like she
11 just, she didn't really want to do anything for them. We
12 were doing it for them.

13 Q What was Brandon doing for them?

14 A He was playing with them, he would, the playground is
15 a little distance away from where we were for the party
16 and he would walk them up there and play with them and
17 bring them back. And him and my sister fixed their plates
18 and then we got their candy for them. She didn't do
19 anything to help us.

20 Q And how did the children react around Brandon?

21 A Like I said, Owen was really clingy to Brandon, like,
22 maybe because he didn't know anybody, he was new to us.
23 But he was right with him the whole time.

24 Q And what about Victim ?

25 A Ashley held her and when she wasn't holding her

1 Brandon was.

2 Q And did she, did Audrina participate in any of the
3 activities on the play ground?

4 A Some of them, yes Brandon would put her in the swing
5 and swing her and get her out.

6 Q When it came time to feed the ice cream and cake who
7 did that?

8 A Brandon and my sister.

9 Q Fed the two children?

10 A Fed the two kids, yes sir.

11 Q Any of them ever appear to be scared of Brandon in
12 any way?

13 A No, sir.

14 Q Thank you. Answer any questions they may have.

15 CROSS-EXAMINATION

16 By Ms. Mayes:

17 Q This was the only occasion you saw them together?

18 A Yes, ma'am.

19 Q Nothing further.

20 CROSS-EXAMINATION

21 By Mr. Able:

22 Q You said Ashley held Victim, Victim wasn't walking
23 too well at fourteen months old, was she?

24 A Yes, sir.

25 Q And so somebody held her most of that time, didn't

1 they?

2 A Yes, sir.

3 Q And that was Ashley?

4 A If it wasn't her it was Brandon.

5 Q And the children appeared to be healthy?

6 A Yes, sir.

7 Q Happy.

8 A Yes, sir.

9 Q Content?

10 A Yes, sir.

11 Q And would people at the party, Brandon knew most of
12 those people, correct?

13 A Yes, sir.

14 Q Y'all grew up together?

15 A Yes, sir.

16 Q And so he was talking with people and milling around
17 and doing things like that?

18 A Yes, sir.

19 Q Ashley had never met any of these people, had she?

20 A No, sir.

21 Q This was her first time in that circle of people?

22 A Yes, sir.

23 Q And she was kind of standoffish?

24 A She did, we tried to communicate with her.

25 Q But the kids were having a good time?

1 A Yes.

2 Q And you didn't see anything wrong with them, any
3 injuries to anything like that?

4 A No, sir.

5 Q Just happy,, healthy children?

6 A Yes, sir.

7 Q That is all I have.

8 THE COURT: You may step down.

9 MR. WISE: I would like to excuse this witness.

10 MR. ABLE: No objection.

11 THE COURT: You are free to go. Ladies and gentlemen
12 of the jury, it is a good point to break for lunch. I am
13 going to ask you be back here in an hour and fifteen
14 minutes, be here at a quarter to 2:00, about 1:45. Thank
15 you. Don't discuss the case with anyone.

16 (Whereupon, the jury was excused from open court to
17 break for lunch.)

18 THE COURT: We will break for lunch and see you all
19 back at 1:45.

20 THE COURT: Mr. Wise, how many witness do you have,
21 for planning purposes?

22 MR. WISE: Mr. Lewis and then three witnesses that
23 are not that long.

24 (Whereupon, a lunch break was taken.)

25 THE COURT: If you will bring the jury in, please.

1 (Whereupon, the jury came into open court at
2 approximately 1:50 p.m.)

3 THE COURT: Mr. Wise, you may call your next witness.

4 MR. WISE: We call Richard Brandon Lewis.

5 Richard Brandon Lewis, being first duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION

8 By Mr. Wise:

9 Q Mr. Lewis, where do you live?

10 A I live in Clinton, South Carolina.

11 Q And what address is that?

12 A 701 Cedar Street.

13 Q Who do you reside with there?

14 A I live with my grandmother and my grandfather.

15 Q How long have you been living with them?

16 A Pretty much my whole life.

17 Q I believe she is here in the courtroom?

18 A Yes, sir.

19 Q Which one is grandmother?

20 A She is the pretty blonde haired lady.

21 Q On the far end?

22 A Yes, sir.

23 Q And is your mother here?

24 A Yes sir, she is sitting right next to her.

25 Q And is your father here also?

1 A Yes sir, he is.

2 Q How did you come to live with your grandmother?

3 A She is pretty much who I have always preferred to
4 live with.

5 Q I believe, did your parents divorce at an early age?

6 A Yes sir, they did.

7 Q And you have lived with her since then?

8 A Yes sir, I have.

9 Q All right. Where do you, are you employed at the
10 present time?

11 A No sir, I am a student.

12 Q Are you an active student right now?

13 A Not at this particular time, no.

14 Q When did you last go to school?

15 A It was last semester.

16 Q And where did you go then?

17 A Clemson University.

18 Q And how did you come to go Clemson?

19 A I did an articulation agreement through Piedmont
20 Technical College, and transferred in.

21 Q And how many hours do you have accredited into
22 Clemson now?

23 A 89, one hour shy of being a senior.

24 Q And when did you start Clemson?

25 A Only two semesters ago.

1 Q And that would have been when?

2 A That would have been the, the Spring semester of
3 2010.

4 Q About this time last year?

5 A Yes, sir.

6 Q And did you start the fall semester?

7 A Yes, I did.

8 Q Were you able to finish that semester?

9 A No sir, I was not.

10 Q And why is that?

11 A I was charged with the charges that I am facing here
12 today and I had to go before a board evaluation before I
13 could be reinstated.

14 Q And were you reinstated?

15 A Yes sir, I was.

16 Q And about how long did that process take?

17 A About a month.

18 Q And how many classes did you miss by then?

19 A I missed a month's worth of classes. I was taking a
20 full load and there are only about three months in a
21 semester so I missed about a third of what I would have
22 learned.

23 Q Okay. Do you have any intentions of going back to
24 Clemson?

25 A I have every intention of going back to Clemson.

1 Q Let's go back a little bit further. Where did you go
2 to high school? .

3 A Clinton High School.

4 Q And when did you graduate?

5 A 2002..

6 Q What did you do after you graduated Clinton?

7 A I went to Piedmont Technical College for about a year
8 and ended up going and working out at Musgrove Golf Course
9 as a cart boy.

10 Q Going down and doing what?

11 A I was, I worked at Musgrove Mill Golf Course and then
12 after that I joined the Navy.

13 Q And when did you join the Navy?

14 A I believe it was 2005.

15 Q And how many years did you serve in the Navy?

16 A About two years.

17 Q And why did you leave the Navy?

18 A I was honorably discharged because I had a seizure in
19 Great Lakes, Illinois.

20 Q And when you came back out of the Navy what did you
21 do?

22 A I resumed my education at Piedmont Technical College.

23 Q And what field of study are you taking at Clemson or
24 will you be taking at Clemson?

25 A Turf grass management.

1 Q And where did that interest develop from?

2 A From working at Musgrove Mill Golf Course.

3 Q Do you have any sisters?

4 A Yes sir, I have one sister.

5 Q Tell us, if you would, how did you meet Ashley

6 Hepburn?

7 A I met her through a mutual friend of mine, Nathaniel

8 Calahan and Nathan and Daniel were best friends at the

9 time.

10 Q And when did you first meet her?

11 A I would say about four years ago I first met her.

12 Q And did you meet her to go out with her at that time?

13 A No sir, I met her under the pretenses of Mr.

14 Hepburn's, I believe she was his girlfriend at that time.

15 Q And you met her casually then?

16 A Yes, sir.

17 Q Did you have occasion to meet her later to start

18 dating?

19 A Yes sir, I did.

20 Q When was that?

21 A I believe that was in December of 2007.

22 Q And how did you establish contact with her at that

23 point?

24 A Through Facebook.

25 Q Who contacted who?

1 A I believe she contacted me but I could be wrong. I,
2 may have contacted her."

3 Q Did y'all exchange some email through Facebook first?

4 A Yes sir; we exchanged phone numbers.

5 Q And did y'all start going out with each other?

6 A Yes, sir.

7 Q And how long did you go out at that point?

8 A I would say, only for about a month.

9 Q And what caused that relationship to break up at that
10 point?

11 A She found out she was pregnant with Victim and
12 wanted to reconcile with Daniel Hepburn.

13 Q And she told you that?

14 A Yes, sir.

15 Q And did you agree to that?

16 A Yes, sir.

17 Q So, what happened after that?

18 A After that I really didn't have any contact with her
19 at all until she started calling me when she got back to
20 South Carolina.

21 Q When she got back to South Carolina from where?

22 A From Washington State.

23 Q That would have been in 2009?

24 A Yes sir, I believe.

25 Q Okay. And how did she contact you then?

1 A By telephone.

2 Q How did she get your number?

3 A I believe she may have already had it from, my number
4 didn't change from the time we met in December.

5 Q Okay. An did y'all start going out?

6 A We didn't start going out immediately but yes sir, a
7 few months later we did.

8 Q And how did y'all, what did y'all, did y'all start
9 dating regularly or how would you describe the
10 relationship?

11 A At first it was just very causal, I was just trying
12 to be a friend to her. And it progressed from there.

13 Q About when did this relationship start?

14 A I would say in about January or February of 2008.

15 Q 2008 or 2009?

16 A Oh, 2009.

17 Q All right. When did y'all start seeing each other
18 kind of regularly?

19 A I would say we started seeing each other regularly in
20 March of 2009.

21 Q March of 2009?

22 A Yes, sir.

23 Q And you got to meet her children?

24 A Yes sir, I did.

25 Q And they were named?

1 A [Victim] and Owen.

2 Q All right. And where was she living at that point?

3 A She was living at Cross Hill with her mother.

4 Q And where were you living?

5 A I was still living with my grandmother in Clinton.

6 Q And where were you going to school?

7 A At the time I was going to Piedmont Technical College
8 in Greenwood.

9 Q There has been some testimony about your stopping by
10 the house, it was on the way to and from school. Is that
11 correct?

12 A Yes sir, Monday through Thursday when I had class I
13 would stop by there on the way back to Clinton.

14 Q Would you stop by on the way to school?

15 A No sir, not usually on the way to school, just mostly
16 on the way back from school.

17 Q And how, what would you normally do when you would
18 stop by?

19 A I would just stop by there and hang out, I would just
20 stop and play with the kids or we would just hang out.

21 Q Did you start spending some nights there on occasion?

22 A Yes sir, I did.

23 Q And how did that, how often would you stay there at
24 night?

25 A I would probably stay there about two nights a week

1' at most.

2 Q And would there be any particular night that you
3 would stay there?

4 A Usually it would be on a Thursday night because I
5 didn't have class the next day, if I stayed.

6 Q Where did you and Ashley go, did y'all see each other
7 on weekends?

8 A Yes, sir.

9 Q And where would y'all go?

10 A It varied, it depended on whether, if she had the
11 kids or not. We would, she would mostly come to my house
12 on the weekends, just different things.

13 Q And if she had the kids on the weekends what would
14 y'all do?

15 A If she had the kids on the weekend we would usually
16 go to my friend, Stetson Shealy's house and hang out
17 there, he was dating my sister at the time and we would go
18 and spend time with them.

19 Q And would you go any other place with the kids?

20 A We would always go to Pine Street Park right above my
21 house in Clinton.

22 Q And you would go there?

23 A Yes, sir.

24 Q All right. Now, how did you get along with the kids?

25 A I got along with them fine.

1 Q Did you get along with one better than the other?

2 A I would say, I got along with Owen better.

3 Q Why is that?

4 A Because, I guess because he was a little boy and he
5 took up with me a lot better.

6 Q What would you, did you help with the children?

7 A Yes sir, as much as I could.

8 Q What would you do?

9 A Just anything that Ashley asked, if she needed me to
10 help with them, just anything.

11 Q Did you ever change diapers?

12 A Yes, sir.

13 Q How many times?

14 A Only a handful of times did I change a dirty diaper
15 but if she had just peed in the diaper, I mean that wasn't;
16 uncommon for me to do that.

17 Q Did you ever change diapers on a baby before?

18 A Never before that.

19 Q Do you have any children?

20 A No sir, I have two nieces.

21 Q Have you ever been married?

22 A No, sir.

23 Q Do you recall the party that has been discussed on
24 August 22nd?

25 A Yes sir, I do.

1 Q Tell us about what happened then?

2 A It was my 9-year-old nieces, her name is Alisa, it
3 was her birthday at the time. I think she was turning 7.
4 And I have always had a lot to do with both of my nieces,
5 if they had a birthday I would always attend any kind of
6 event like that.

7 Q And did you discuss going to the event with Ashley?

8 A I did.

9 Q She agreed to going?

10 A Yes, sir.

11 Q All right. And what did you do or what did y'all do
12 with that, on August 22nd event?

13 A We just went up there and ate cake and ice cream and
14 I remember they had a piñata and I let Owen, I picked him
15 up and let him hit the piñata.

16 Q Did you play with Victim at that get together?

17 A Yes, sir.

18 Q What did you do with her?

19 A She wasn't walking at the time so I just put her in
20 the swing and I think, just hold her hand while she went
21 down the slide.

22 Q What did Ashley do at that get together?

23 A She didn't really know anyone there so I assume she
24 was kind of standoffish and she just, I guess she sat
25 there with Victim most of the time because she wasn't

1 walking.

2 Q You said you got along better with Owen than Audrina,
3 what were some of the indications of that?

4 A Just that, he was running around, he would play with
5 me and Ashley, would usually hold Victim more. She
6 wouldn't really go to somebody she wasn't familiar with as
7 much in the house, I wouldn't think.

8 Q Who would not?

9 A Victim.

10 Q Audrina, what do you mean wouldn't go to somebody?

11 A If I were to hold her in the room and Ashley were to
12 walk in the room she would always reach out for her mama.

13 Q What about if her mother walked in the room?

14 A Yes, Doris walked in the room she would want Doris.

15 Q Outside of that did you get along with Victim?

16 A Yes, sir.

17 Q Let's move up, right before this tragedy happened. On
18 the 12th of October did you stop by there on the way home?

19 A Yes sir, I did.

20 Q And what time did you get there?

21 A I would say around 3:30.

22 Q Was there anybody else there at that time?

23 A Ashley and the kids were there.

24 Q Anybody else?

25 A No, sir.

1 Q And how long did you stay there at that time?

2 A I stayed there until it was about time for her mother
3 to get home.

4 Q And what time would that normally be?

5 A Usually be about 5:00 o'clock.

6 Q All right. Did you and Ashley have any discussions
7 while you were there for the hour or hour and a half?

8 A Yes sir, I imagine we did.

9 Q Did y'all have a disagreement?

10 A Yes, sir.

11 Q Describe that and tell us what happened?

12 A I don't exactly recall what the disagreement was
13 about at that time. I remember she said something and I
14 playfully tapped her in the face with the pillow and then
15 she threw it across the room at me. And I said something
16 to her about it and she pretty much slapped me in the
17 face.

18 Q Did you say something kind of derogatory?

19 A I did.

20 Q And she did what?

21 A She slapped me.

22 Q What was her attitude that day?

23 A She was stressed.

24 Q Why was that?

25 A She hadn't got the job--

1 MR. ABLE: Objection, calls for speculation.

2 Q Let me rephrase the question then. What was her
3 attitude that day?

4 A I am sorry.

5 Q What was her attitude that day?

6 A It wasn't a very good attitude.

7 Q Did she tell you anything that would have indicated
8 to you that she was, had a bad attitude?

9 A Yes. She pretty much let me know, that she didn't get
10 a job that she had been relying on and that she felt like
11 she really needed at the time.

12 Q Did she say anything what she had done the night
13 before?

14 A She said that she didn't have very much sleep the
15 night before.

16 Q And did, that was told to you before you left about
17 5:00 o'clock?

18 A Yes, sir.

19 Q Okay. When you left did she call you on the phone?

20 A Yes, sir.

21 Q Did you call her back?

22 A Yes sir, I did.

23 Q And did y'all have some conversations?

24 A Yes, sir.

25 Q And what was, what was she asking you to do in that

1 conversation?

2 A At the time she was wanting me to help her get a
3 little bit of money and--

4 MR. ABLE: Objection, Your Honor, relevance.

5 MR. WISE: The element of the stress he was talking
6 about.

7 THE COURT: Y'all come over here.

8 (Whereupon, a bench conference was held in the
9 presence of the jury but out of the hearing of the
10 jury.)

11 THE COURT: Mr. Wise, continue, please.

12 Q Did y'all have a discussion about your coming back
13 over there?

14 A Yes sir, we did.

15 Q And what was that discussion?

16 A She wanted me to come back over there, I think she
17 thought I may have had some money and she expressed to me
18 that she was tired and wanted me to help her out with the
19 kids a little bit.

20 Q I want to hand you this and ask you to identify this
21 as a copy of your phone bill from that date.

22 A Yes, sir.

23 Q And I call your attention down to the 7:20 p.m.
24 notation, do you use that?

25 A Yes sir, I do.

1 Q And whose phone number is that reflected on that
2 call?

3 A There are two numbers, there is my number and
4 Ashley's number.

5 Q That is Ashley's number. And how long did that call
6 last?

7 A 13 minutes, 6 seconds.

8 Q All right.

9 MR. WISE: I would like to introduce this as
10 defendant's 3.

11 MR. ABLE: Judge, I don't understand the relevance of
12 this. No objection.

13 THE COURT: In evidence without objection as defense
14 3.

15 (Whereupon, Defendant's Exhibit 3 was admitted into
16 evidence.)

17 Q And after that telephone conversation what did you
18 do?

19 A Shortly after that I told, after the phone
20 conversation I got in my car and rode back up to her
21 mother's house in Cross Hill.

22 Q And what time did you get back up there?

23 A I would say it was maybe 15 after 8:30, 8:30,
24 something like that.

25 Q Who was there when you got there, who was up when you

1 got there?

2 A Ashley and Victim and Owen were all up.

3 Q Was anybody else there at the time?

4 A Yes sir, David Crumley and Doris Davis, Ashley's
5 mother and her boyfriend.

6 Q And where were they?

7 A They were already in her room asleep.

8 Q What was Ashley doing when you got there?

9 A I think she had just gotten the kids out of the bath
10 and was dressing them.

11 Q And did you assist in any of those duties?

12 A Yes sir, she put Audrina on the bed and dressed her
13 and I dressed Owen.

14 Q And anything happen after that?

15 A We just went back into the living room and watched
16 TV.

17 Q When did the incident concerning the brushing of the
18 teeth occur?

19 A That was when she was getting Owen ready for bed.

20 Q And do you know about what time that was?

21 A I think it was around 10:00 o'clock, 10:30.

22 Q All right. And what happened, well let me back up
23 for a second. Prior to that, prior to 10:00 o'clock what
24 did y'all have done that evening for the hour and a half
25 or so you had been there?

1 A We were just sitting there watching TV.

2 Q Anything else in particular?

3 A I think I was playing with Owen and he accidentally
4 hit me in the face or something and Ashley told him to say
5 that he was sorry. And he didn't, I don't think he meant
6 to do it so he didn't want to say he was sorry. And I
7 made a comment saying that, that if he didn't listen to
8 her now he wasn't ever going to listen to her. Something
9 of that nature.

10 Q And did that precipitate an argument between the two
11 of you?

12 A Yes, sir.

13 Q About 10:00 o'clock where were you when she was
14 getting ready to put Owen to bed, was **Victim** in bed at
15 this point?

16 A I believe she was, I think she had already laid her
17 in her crib.

18 Q And then what happened?

19 A They walked back to Ashley's room.

20 Q When you say they, meaning?

21 A Owen and Ashley walked back to her bedroom and I
22 walked back there with them.

23 Q And the bedroom you are talking about is the back
24 bedroom on the lower left of that diagram?

25 A Yes, sir.

1 Q And tell us what happened back in that bedroom?

2 First of all, what were you doing?

3 A I was laying on the bed and Owen was crawling under
4 the bed and I would just stick my head up from under, like
5 I was, kind of under one side of the bed and he would run
6 to the other side of the bed. And we were just playing.

7 Q And then the discussion about brushing the teeth come
8 up?

9 A Yes, sir.

10 Q And what happened then?

11 A I think maybe Owen wanted to keep on playing. I
12 guess I kind of got him riled up and he didn't want to go
13 brush his teeth.

14 Q What did Ashley do?

15 A She told him repeatedly to brush his teeth and he
16 just didn't want to do it and eventually she yanked him up
17 by the arm and took him to the bathroom and gave him a
18 spanking.

19 Q Had you ever seen him doing anything like that to
20 Owen before?

21 A I had never seen him give her a spanking before then.

22 Q Well, did you see this spanking?

23 A No, I didn't actually see her give him a spanking.

24 Q Where did she take Owen?

25 A She took him into the bathroom.

1 Q And that is the bathroom right next to the bedroom
2 you were in?

3 A Yes, sir.

4 Q And what did you hear from the bathroom?

5 A I could actually hear her pop him from the room I was
6 in, from Ashley's bedroom.

7 Q More than once?

8 A More than once.

9 Q How many times?

10 A At least four or five.

11 Q Had you ever seen her spank Owen before?

12 A Never.

13 Q And did that, what was your reaction to that?

14 A I couldn't believe it.

15 Q All right. What happened next?

16 A They came back to the bedroom, I was still laying on
17 the bed and I just got up and walked back into the living
18 room to avoid her.

19 Q What was Owen doing when he came back to the bedroom?

20 A He was crying, he was sniffing.

21 Q How would you describe his crying?

22 A He was crying pretty hard.

23 Q What did you do then?

24 A I just walked back into the living room because I
25 guess I kind of felt responsible for him getting a

1 whipping by saying something to her earlier and I just
2 wanted to stay out of the way.

3 Q So you walked into the living room to do what?

4 A To watch TV.

5 Q Describe the living room for you, if you would, how
6 it is arranged. First of all, where is the living room on
7 that diagram?

8 A The living room is right there in the center of the
9 diagram.

10 Q Is that the big empty space?

11 A Yes, sir.

12 Q Describe the living room for me.

13 A It is a big living room, it kind of doubles as a
14 dining room.

15 Q I ask you to look at that picture and see if that
16 describes, do you recognize that?

17 A Yes sir, that is the live in area of the house.

18 Q Okay. And where did you go in that living room?

19 A I went to the couch that was up against the wall.

20 Q Is that the couch shown in the picture or another
21 couch?

22 A No sir, that is the couch.

23 Q That is the couch, okay, the one against the window?

24 A Yes, sir.

25 Q And what did you do?

1 A I just sat there, I believe Monday night football was
2 on.

3 Q Where was Ashley at this point?

4 A She was back in the, in her room in the bed with
5 Owen.

6 Q In the bed with Owen?

7 A Yes, sir.

8 Q And where was **Victim**?

9 A She was in her bedroom in her crib.

10 Q Okay. Did you check on Ashley and Owen or anything?

11 A Yes, sir.

12 Q Tell me what happened after the football game?

13 A After the football game I went back to see if Ashley
14 wanted to come watch a movie with me, it was a movie
15 called Congo.

16 Q And did she?

17 A No sir, she didn't.

18 Q Where was Owen at that point?

19 A He was in the bed with Ashley.

20 Q So this would have been about what time then?

21 A I would say that would be around 11:00 o'clock.

22 Q All right. So you, was she asleep when you went in
23 there or was she awake?

24 A When I asked her to watch a movie I think she was
25 still awake.

1 Q And then she said no?

2 A She said no.

3 Q What did you do?

4 A I just went back in there to watch TV.

5 Q And watch the movie?

6 A Yes, sir.

7 Q Did you hear **Victim** later that evening?

8 A Later in the evening, yes, I did hear. She was
9 teething at the time and I could hear her faintly cry.

10 Q All right. And did you hear anything else happen to
11 her to hear **Victim** crying?

12 A Yeah, I heard Ashley get up and stomp into the room,
13 I actually felt her footsteps.

14 Q And let's go back. You were in the living room?

15 A Yes, sir.

16 Q All right. The couch was against which wall?

17 A The couch would have been against the wall that I was
18 sitting on. And that would have been right beside the
19 kids playroom.

20 Q Well, go up there and point out where the couch that
21 you were on?

22 A It was right here.

23 Q So that was a little different couch than one in that
24 picture?

25 A It is actually the same couch but it wraps around.

1 Q One couch wraps around?

2 A Yes, sir.

3 Q So, it wraps around that wall and then goes around?

4 A Yes, sir.

5 Q Opposite you were on is what?

6 A I am sorry.

7 Q The opposite of the couch you were on is what?

8 A The TV.

9 Q All right. So, you were on the couch that butts up
10 to the kids room?

11 A Yes, sir.

12 Q What did you hear?

13 A I can remember hearing Ashley stomp into the room and
14 I heard her go into the room and I can remember Victim
15 crying a little bit. And then she wasn't crying and
16 Ashley went out of the room.

17 Q Had you heard Victim cry before?

18 A None before that night. I heard her cry before, yes.

19 Q Was anything different about the way she cried this
20 time?

21 A Yes sir, her, there were short pauses in between her
22 cry and it just, it sounded to me like she could have been
23 shaken.

24 Q Prior to that night or at the time that you were on
25 the sofa did the baby being shaken enter your mind?

1 A Not at all.

2 MR. ABLE: Objection, leading, Your Honor.

3 THE COURT: Sustained, can you rephrase.

4 MR. WISE: I will rephrase the question.

5 Q That night what was your opinion as to what was
6 happening to that child?

7 A That night I didn't think anything had happened to
8 her. I just thought her mom went in there and checked on
9 her.

10 Q Had you been around the children that much?

11 A Not a whole lot.

12 Q So, after Victim quit crying what did you hear?

13 A I heard her leave the room and go back into her room.

14 Q All right. And what did you do then?

15 A I waited a minute to see if she had calmed down, I
16 just figured she had been, she was agitated so I waited
17 about ten minutes and then went and checked on Ashley and
18 asked her if she wanted anything to eat.

19 Q And what did she say?

20 A She said that she didn't want anything to eat.

21 Q All right. Now, and did you, what did you do?

22 A I fixed myself a plate of food and I ate it. It
23 wasn't a big plate so I ate it fairly quickly and threw
24 the plate away in the trash can.

25 Q We will get to that in a second. Prior to hearing

1 the footsteps going down the hall in the child's room and
2 hearing [Victim] crying had you checked on [Victim] earlier
3 in the evening?

4 A Yes sir, I did.

5 Q And how was she then?

6 A She seemed to be fine.

7 Q What did you do to check on her?

8 A I just, the door was already cracked so I just kind
9 of stuck my head in there and she was really a light
10 sleeper and she was just popped her head up and I let the
11 door shut back and just went back and started watching TV.

12 Q So then you, let's move forward a little bit. You
13 checked with Ashley and asked her if she wanted anything
14 to eat, is that correct?

15 A That is correct.

16 Q And you fixed a plate?

17 A I did.

18 Q What did you do after that?

19 A I went and used the bathroom and then I was getting
20 ready for bed so I opened the door to check on [Victim]
21 again.

22 Q Now, is that, what is your normal routine when you
23 spend the night there about checking on [Victim] before you
24 go to bed?

25 A I would just check on her usually before I went to

1 bed or if I heard her in there crying I would go in there
2 and it was usually because she had dropped her bottle or
3 something and I would give it to her, just little things.

4 Q So, you were getting ready to go to bed?

5 A Yes, sir.

6 Q And what did you find when you went in there?

7 A She was laying horizontally, her head was placed up,
8 it was against the bars and she was laying facedown, that
9 is not the way that she had slept.

10 Q And when you say horizontally, what do you mean by
11 that?

12 A I mean if she were to sleep normally in the crib she
13 would lay vertically. When I saw her she was laying
14 horizontally.

15 Q All right. And this is the crib?

16 A Yes, sir. I believe it is.

17 Q And when you say vertically you mean how?

18 A Like she was normally asleep. She would sleep like
19 that.

20 Q Come up to the diagram and show us what you are
21 talking about?

22 A Like that.

23 Q And you motion your hand up and down the length of
24 the bed?

25 A Yes, sir.

1 Q What did you see when you went in there that night,
2 at that morning?

3 A I saw that she was laying in the crib horizontally,
4 her forehead was pressed up against the bars of the crib.

5 Q Did she normally sleep with her head pressed up
6 against the bars of the crib?

7 A No.

8 Q Did, how did that appear to you?

9 A It appeared strange.

10 Q What did you do?

11 A I went to check on her and I was going to move her so
12 she could lay right and normally she would have been awake
13 by then. I noticed that, well she had blood on her mouth
14 and when I picked her up she was barely breathing. She
15 was just limp.

16 Q What did you do?

17 A I ran out of the room with her in my arms and got
18 Ashley out of bed and it struck me odd that she didn't
19 grab her from me right then. She went to the bathroom and
20 then when I handed her to her--

21 Q When did you hand her to her?

22 A In the hallway.

23 Q All right.

24 A I busted in the bathroom and she was using the
25 bathroom before she even really checked on her so I was

1 just franick, I was telling her that something is not
2 right with her. And that she was barely breathing and
3 when she finally took her from me her head just kind of
4 fell back where she couldn't support her neck.

5 Q What was your immediate reaction as to what was wrong
6 with her?

7 A I just thought she had had a seizure.

8 Q And why is that?

9 A Because I have had a seizure before and her mouth was
10 bleeding.

11 Q After Ashley took her from you what happened then?

12 A We went and woke her mama up and David and we just
13 sat her down on the floor and tried to keep her real
14 still. And EMS was called.

15 Q Did you make the suggestion before calling EMS as to
16 what to do?

17 A I thought it would be better if we just went ahead
18 and took her right then because she was just barely
19 breathing. So, I offered that I would just drive my car.

20 Q And was that done?

21 A No, sir.

22 Q So EMS comes?

23 A Yes, sir.

24 Q And how long were they there?

25 A It took them about ten minutes to get there and

1 everything was happening really fast at that point so I
2 don't think, but I don't think they were there very long
3 at all.

4 Q You don't think what?

5 A I don't think EMS was there very long at all.

6 Q EMS left?

7 A Right.

8 Q How did you get to Greenwood?

9 A I rode in one of the response vehicles with Ashley.

10 Q And y'all went to Self Hospital?

11 A Yes, sir.

12 Q How long did you stay, well, how long were you there
13 before they transferred Victim to Greenville?

14 A I really don't have any idea how long I was there
15 before they took her to Greenville because I was in the
16 back talking to law enforcement.

17 Q You ran across law enforcement there?

18 A Yes, sir.

19 Q And you also ran across the Chaplain that testified
20 earlier?

21 A He was there when we arrived.

22 Q Did either you or Ashley see Victim at Greenwood
23 Hospital?

24 A I am sorry.

25 Q Did you see Victim at Greenwood Hospital?

1 A No, sir.

2 Q Do you know if Ashley did?

3 A I imagine she did, I am not sure.

4 Q Were y'all together the whole time?

5 A No, but we arrived there together but she went in the
6 back with, I assume she went back with Victim and I
7 stayed in the family room.

8 Q You stayed in the family room?

9 A Yes, sir.

10 Q And did Ashley eventually come into the family room
11 with you?

12 A We arrived in the family room together but she, I
13 don't think she came back to the room.

14 Q When you, who was in the family room talking with you
15 at that point?

16 A I remember David Crumley was there. I remember Doris
17 Davis was also there. I think they had Owen with them and
18 I remember when Daniel and his family got there too.

19 Q Was any law enforcement there at that point?

20 A Not that I recall, I don't think.

21 Q When did the Chaplain come in?

22 A I think he came in before Doris or even David had a
23 chance to get there.

24 Q Did you have a conversation with him?

25 A I did.

1 Q Do you remember the questions he asked you?

2 A I really don't.

3 Q He said you made a statement to the effect of the
4 baby didn't like you but I love her. Do you recall making
5 a statement like that?

6 A I don't recall making that statement but it is
7 possible.

8 Q When did you first talk to law enforcement later?

9 A Shortly after they took Victim back. I could
10 remember Doris saying something about they suspected it
11 could have been child abuse and the next thing I remember
12 was, I think it was the Chaplain who asked me to go back
13 and I think from there some police officers wanted to
14 speak to me.

15 Q Do you remember seeing Officer Blackmon around at
16 that point?

17 A Yes sir, I think he was.

18 Q All right. Did they ask you any questions there at
19 the Greenwood Hospital?

20 A Yes, sir.

21 Q Was Mr. Deal in that room at that point?

22 A I don't remember him being there but I guess at some
23 point he walked in the room. I didn't remember seeing
24 him.

25 Q But it is obvious he was in the room at some point?

1 A Yes, sir.

2 Q What did law enforcement tell you at that point?

3 MR. ABLE: Objection, calls for hearsay.

4 MR. WISE: Your Honor, I think it goes to show of the
5 context of some of his answers, we are not admitting it
6 necessarily for the truth of the matter asserted but just
7 to show what he heard in relation to some comments
8 earlier.

9 MR. ABLE: It is hearsay, Judge.

10 MR. WISE: It is an exception if it is not hearsay,
11 we are not offering for the truth.

12 THE COURT: You are not offering to demonstrate what
13 the officer said or the truth of what the officer said?

14 MR. WISE: Right.

15 MR. ABLE: Well, I think then he said what law
16 enforcement, he needs to clarify.

17 THE COURT: Back up a little bit.

18 Q Do you remember which law enforcement officer was
19 talking to you or was asking you questions?

20 A I think it was Officer Ben Blackmon.

21 Q All right. Do you remember what he said to you about
22 what they believed or what they suspected?

23 MR. ABLE: Objection.

24 THE COURT: Overruled, I think I understand where he
25 is going, proceed.

1 A I remember them saying that she had some type of
2 trauma to her head and they were also saying that it was
3 possible, shaken baby syndrome.

4 Q Were you familiar with that term before that night?

5 A It was the first time I had ever heard it.

6 Q All right. How long did you stay in Greenwood?

7 A I think I stayed there for every bit of two hours, I
8 guess.

9 Q Where did you go when you left Greenwood Hospital?

10 A One of the officers, I didn't drive so one of the
11 officers there offered to give me a ride to the annex
12 building in Laurens.

13 Q Had they said anything to you about talking to you?

14 A Yes, sir.

15 Q So you rode to Laurens how?

16 A I rode in a police car.

17 Q Do you remember which officer was driving that car?

18 A I think it was Officer Garrison.

19 Q Did you ride in the front seat or back seat?

20 A I think I rode in the back seat.

21 Q Okay. So the officer took you to Laurens. About
22 what time did you get to Laurens?

23 A It is hard to say, really, I think it was about 5:00
24 in the morning.

25 Q Where did they take you?

1 A They took me upstairs to a, I think it was Ben
2 Blackmon's office.

3 Q Before you went to Laurens did you call anybody?

4 A Yes, sir. I made a call to my grandmother.

5 Q All right. Do you remember about what time that was?

6 A I think that was about 3:00 in the morning.

7 Q You briefly described to her what happened?

8 A Yes, sir.

9 Q So you get to Laurens about what time?

10 A I think it was about 5:00 or 5:30 in the morning.

11 Q And where did you go then?

12 A I went upstairs to Officer Ben Blackmon's office to
13 answer some questions.

14 Q Was anybody else there?

15 A Yes sir, there were quite a few other officers. I am
16 not familiar with all of their names.

17 Q Did you have a discussion with Office Blackmon about
18 this case?

19 A I did.

20 Q And how long did that conversation last?

21 A It lasted for about an hour.

22 Q Total?

23 A No, not total. I spoke with various law officers up
24 there for, I would say for about five hours.

25 Q And they wrote, they advised you of I guess of what

1 we particularly call Miranda rights?

2 A Yes, sir.

3 Q And you were willing to talk to them?

4 A I was.

5 Q You didn't have any problem about it?

6 A No, I didn't have any problems.

7 Q Did you eventually give Officer Blackmon a statement
8 at about 6:42 that morning?

9 A Yes, sir.

10 Q And State's exhibit 30, is that the statement you
11 gave Officer Blackmon at that point?

12 A Yes, sir.

13 Q In that statement did you tell Officer Blackmon
14 everything that you knew?

15 A No sir, I didn't.

16 Q Did you withhold some information?

17 A Yes sir, I did.

18 Q Why is that?

19 A I just, I didn't want to get her in any trouble.

20 Q Get her, meaning who?

21 A Ashley.

22 Q Why?

23 A I wanted to make sure that it was really, I guess, a
24 child abuse case before I gave any information that would
25 have gotten her in trouble.

1 Q As you were sitting there in that annex, upstairs in
2 the annex did you believe that anything that Ashley
3 Hepburn did that night could have hurt that child?

4 A I honestly didn't.

5 Q Did you believe she would do anything to hurt the
6 child?

7 A I couldn't imagine her doing anything like that.

8 Q So, what did you leave out of that statement, the
9 first statement you gave to the police?

10 A I left out that we had gotten into an argument, I
11 left out that she had slapped me in the face, I left out
12 that I heard her going to **Victim** room.

13 Q Did you leave the annex after giving that statement?

14 A No, sir.

15 Q Did anybody come down there to see you that you knew?

16 A Yes, sir.

17 Q And who was that?

18 A My grandmother.

19 Q And did your grandmother talk to you in the room?

20 A Yes sir, she did.

21 Q Talk to you very long?

22 A Not very long.

23 Q After your grandmother talked to you what did you do?

24 A I gave them another statement.

25 Q And I hand you what has been marked as defendant's

1 exhibit 2 for identification and ask you if you recognize
2 that?

3 A Yes sir, I do.

4 Q Is that the second statement you gave them?

5 A Yes, sir.

6 MR. WISE: Your Honor, I would move to introduce this
7 one.

8 MS. MAYES: No objection.

9 MR. ABLE: Judge, I think he can testify about the
10 statement, I don't think he can introduce it at this time.

11 MR. WISE: Under the rule of completeness in the
12 State's case a portion of it was, I think we should be
13 allowed to introduce this in its entirety.

14 THE COURT: I will allow it into evidence. It will
15 be defendant's 2 into evidence.

16 (Whereupon, Defendant's Exhibit 2 was admitted into
17 evidence.)

18 Q After you gave that statement to the police what did
19 you do?

20 A Which statement are you referring to?

21 Q Excuse me, after you gave the second statement, the
22 one that has been marked as number 2, the typed statement.

23 A I went home.

24 Q You went home. How did you get home?

25 A My grandmother gave me a ride home.

1 Q She stayed until the statement was complete?

2 A Yes, sir.

3 Q And when you actually gave that statement was she in
4 the room?

5 A No, sir.

6 Q She stayed around until you got through?

7 A Yes, she did.

8 Q And you gave that statement to Officer Plaxico?

9 A It was actually Sergeant Moody.

10 Q Sergeant Moody. Okay. You answered all of Sergeant
11 Moody's questions when you gave that statement?

12 A Yes, sir.

13 Q You were willing to answer any questions he asked?

14 A I think I answered every question anybody asked.

15 Q Then you went home with your grandmother?

16 A Yes, sir.

17 Q Several days later did Officer Plaxico come by your
18 house?

19 A Yes sir, he did.

20 Q And did you talk to him initially?

21 A No, I didn't.

22 Q And what did you do?

23 A I left out of my house and ran to my friend, Mandy's,
24 house.

25 Q And what did your grandmother do?

- 1 A She sent my mama to come get me.
- 2 Q And did you come back?
- 3 A Yes, I did.
- 4 Q Did you know what Officer Plaxico was there for?
- 5 A He was there to talk to me.
- 6 Q Did you know before he talked to you what he was
- 7 there for?
- 8 A No, I didn't.
- 9 Q Had you ever been through anything like this before
- 10 in your life?
- 11 A Never.
- 12 Q Did you talk to Officer Plaxico at that point?
- 13 A Yes sir, I did.
- 14 Q Did you answer any questions he had at that point?
- 15 A I did.
- 16 Q You always were willing to answer his questions?
- 17 A Yes, sir.
- 18 Q Did he arrest you at that point?
- 19 A No, sir.
- 20 Q Was there a Department of Social Services action
- 21 filed against you and Daniel Hepburn and Ashley Hepburn?
- 22 A Yes sir, there was.
- 23 Q And that was over in Family Court?
- 24 A Yes, sir.
- 25 Q And as a result of that did you hire an attorney?

1 A Yes sir, I hired you.

2 Q And did we attend a hearing over there, let me back
3 up. Prior to the hearing with the Department of Social
4 Services, prior to the DSS hearing on May 28th of 2010 had
5 you been given a subpoena to come and make a statement in
6 this case?

7 A Yes sir, I was.

8 Q And who issued that subpoena to you?

9 A The Laurens County Police.

10 Q Do you know who it was on behalf of?

11 A It was on behalf of the State, I assume.

12 Q Did you do a deposition in this case?

13 A Yes, sir.

14 Q And I believe that was on May or March the 4th of
15 2010?

16 A Yes, sir.

17 Q And who was present at that deposition?

18 A Ashley Hepburn, Daniel Hepburn and Bryan Able and
19 myself and you.

20 Q And I was there. And where was that deposition held?

21 A That was here at the Court House.

22 Q Here at this Court House?

23 A Yes, sir.

24 Q And do you remember where the room is?

25 A I don't remember exactly where it is.

- 1 Q All right. Was it, describe the room.
- 2 A It was just a really small room. It wasn't in a
- 3 courtroom, it was just like in an office.
- 4 Q What kind of table was there?
- 5 A Just a table similar to the ones sitting in front of
- 6 me.
- 7 Q You sat on one side of the table?
- 8 A Yes, sir.
- 9 Q And who was on the opposite side of the table?
- 10 A Bryan Able, Ashley Hepburn and Daniel Hepburn.
- 11 Q And about how long did this deposition last?
- 12 A For about three hours, I think.
- 13 Q Who asked the questions?
- 14 A Bryan Able.
- 15 Q Did you answer his questions?
- 16 A Yes, sir.
- 17 Q Did you ever refuse to answer any of his questions?
- 18 A No, sir.
- 19 Q Did you ever intend to refuse to answer any of his
- 20 questions?
- 21 A I did not.
- 22 Q And that went on for three hours, roughly?
- 23 A Yes, sir.
- 24 Q Subsequent, on March the 4th, on May 18th of 2010 did
- 25 you come back to the Court House for a DSS hearing?

- 1 A Yes, sir.
- 2 Q And who was there at that DSS hearing representing
- 3 you?
- 4 A You were.
- 5 Q And this is the DSS hearing involving you and Ms.
- 6 Hepburn and Mr. Hepburn?
- 7 A Yes sir, it was.
- 8 Q And at this, who was representing the Department of
- 9 Social Services?
- 10 A I think the name was Houck, something like that.
- 11 Q And let me just show you something and see if it
- 12 refreshes your memory. Look at that and see if that
- 13 refreshes your memory of the name of the attorney for the
- 14 Department of Social Services?
- 15 A Yes sir, it was Laura Houck.
- 16 Q How do you spell the last name?
- 17 A H-O-U-C-K.
- 18 Q Okay. Did you testify in that case?
- 19 A Yes sir, I did.
- 20 Q Who called you as a witness in that case?
- 21 A I assume the State.
- 22 Q Laura Houck?
- 23 A Yes, sir.
- 24 Q And she asked you the questions?
- 25 A Yes, sir.

1 Q Did you answer her questions?

2 A Yes, sir.

3 Q Did you ever refuse to answer her questions?

4 A No, sir.

5 Q Did you answer her questions truthfully?

6 A Yes, sir.

7 MR. ABLE: Objection. Judge, we were in a different
8 courtroom and I don't know if it is something for the jury
9 to determine, it is not what he was answering then, it is
10 what he is answering today.

11 THE COURT: I think that is bolstering somewhat, Mr.
12 Wise. The last question was--

13 Q Did you answer her questions?

14 A Yes, sir.

15 Q Did you ever refuse to answer any questions?

16 A No, sir.

17 Q Was Mr. Able there?

18 A Yes, sir.

19 Q Did he ask you questions?

20 A Yes sir, he did.

21 Q Did you answer his questions?

22 A Yes sir, I did.

23 Q Brandon, on the early morning hours of the 13th of
24 October of 2009 did you ever inflict any harm to the
25 child, Audrina?

1 A No, sir.

2 Q Did you?

3 A No, sir.

4 Q Did you ever pick her up and shake her?

5 A No, sir.

6 Q Did you ever strike her upside the head?

7 A No, sir.

8 Q What hand do you use as your predominant hand?

9 A I am right handed.

10 Q Did you even know she was being hurt that night?

11 A No, sir.

12 Q If you had known that she was being hurt that night
13 would you have done something?

14 A I wouldn't have--

15 MR. ABLE: Objection, leading.

16 THE COURT: Overruled.

17 Q If you had known she was being hurt that night would
18 you have done anything?

19 A I would have stopped her.

20 Q Thank you. Answer any questions they may have.

21 THE COURT: Ms. Mayes.

22 MS. MAYES: Yes sir, may we approach?

23 (Whereupon, a bench conference was held in the
24 presence of the jury but out of the hearing of the
25 jury.)

1 THE COURT: Ladies and gentlemen of the jury, we are
2 going to take a brief break. We will have you back in
3 about five minutes. Don't discuss the case. We will see
4 you in a few minutes.

5 (Whereupon, the jury was excused from open court for
6 a break.)

7 THE COURT: The jury is out. At the sidebar Ms.
8 Mayes informed me that she intended to go into the V.A.
9 record issue. Mr. Wise, you want to be heard on that
10 before we go down that road?

11 MR. WISE: Yes, Your Honor. I think, one, I think
12 certainly more prejudice from probative because if she
13 goes into the record it is come out with all of -- if she
14 can represent to the Court that something so grossly
15 inconsistent with what he said on the stand or any of the
16 other times he has testified then she may have a somewhat
17 decent argument. But I don't think there is anything in
18 there that is so grossly inconsistent with anything he
19 said. It is certainly not an admission on his part of
20 causing any harm to this child.

21 THE COURT: Ms. Mayes.

22 MS. MAYES: Yes, Your Honor. I would certainly
23 classify it as a gross inconsistency. According to the
24 records of Dr. Hill he reported that he saw the
25 codefendant stomp from her room into the room where the

1 baby was fussing. And then after a few minutes she went
2 back to her room, he reported checking on the baby and the
3 baby was lifeless. He certainly has never reported before
4 that he saw her stomp from her room into the child's room.

5 MR. WISE: I guess the question comes, how do we, I
6 don't think it is that major of a difference at all to be
7 frank with the Court.

8 THE COURT: Again what is the distinguishing
9 characteristics between the two statements, Ms. Mayes, one
10 stomping and the other seeing and hearing?

11 MS. MAYES: Seeing, Your Honor. He has, initially he
12 had maintained that he had no information to add at all
13 and then the second statement that has been provided to
14 law enforcement that he has testified to about today is
15 that he heard her footsteps stomping into the child's room
16 from the den area. This statement to the psychiatrist is
17 that he saw her stomp from her room into the child's room.

18 THE COURT: Does the law require it to be a gross or
19 substantial inconsistent statement or merely an
20 inconsistent statement. My understanding was the law
21 merely requires it to be an inconsistent statement for
22 purposes of impeachment. I agree it is not day and night
23 different. It is 11:00 and 11:30 different.

24 MR. WISE: It is not like I walked in there and saw
25 her shaking the baby which would be a little day and night

1 difference. I just think it gets into the problem of the
2 privilege. It creates more problems than it solves in my
3 frank opinion, for the minute probative value it may have.

4 THE COURT: I understand and if the State wants to
5 travel that road they do it at their peril. I realize
6 that could very well be incorrect in my understanding that
7 we had last week of what the law was concerning these
8 records.

9 MR. WISE: Then my other question would be, how do we
10 approach the subject that he was at the V.A. Hospital.
11 Now, it can be addressed in ways without getting into the
12 idea of a suicide just by simply saying that he was seeing
13 doctor so and so about this case.

14 THE COURT: You intend to go into the suicide, Ms.
15 Mayes, Mr. Able?

16 MR. ABLE: Yes, sir.

17 MR. WISE: I know Mr. Able does.

18 THE COURT: Right. I believe I was pretty clear, was
19 there any misunderstanding as far as my ruling last week,
20 the State could not use the suicide in the case-in-chief.
21 It is a different matter entirely if he took the stand.

22 MR. WISE: Only if he opens the door and he has done
23 nothing to open the door.

24 MR. ABLE: No, no, that wasn't the understanding,
25 Judge, the ruling was if he took the stand.

1 THE COURT: Mr. Wise, the reason for me prohibiting
2 the evidence of suicide was the 403 analysis. The danger
3 of prejudice to your client or the prejudicial effect to
4 your client of eluding that suicide was outweighed by the
5 probative value especially in light of your failure to
6 rebut the inference or the guilty inference from the
7 suicide with the records from the V.A. in light of the
8 Bruton issues because it was impossible to allow you to
9 then, Ms. Mayes had brought out the suicide and you could
10 not subsequently explain, he consistently told the doctor,
11 A, B, C, D, E, F, G, however many or however many other
12 hospital personnel. He consistently told them the same
13 story, that was implicating Ms. Hepburn. So that was the
14 reason for that. I realize you have rested. I will allow
15 you, if you want to, with that understanding, Mr. Able is
16 going to be able to tackle that, I will let you reopen and
17 ask him a few additional questions if you want to do it on
18 direct.

19 MR. WISE: I don't want to deal with it on direct. I
20 will, I think the State has the psychologist here or the
21 psychiatrist and I may just end up calling that witness.
22 And I can reask him on redirect too.

23 THE COURT: I didn't mean to overlook you, Mr. Able,
24 you have been standing.

25 MR. ABLE: No sir, I am just standing.

1 THE COURT: Did you have anything else, Ms. Mayes?

2 MS. MAYES: No sir, Your Honor. I do need to speak
3 briefly with Dr. Hill, I do believe she is here, to advise
4 her on the privilege issue. I have spoken with their
5 attorney. My understanding was that the employees at the
6 V.A. Hospital would not invoke from the privilege if they
7 were subpoenaed. And I just need to reaffirm that is her
8 position.

9 THE COURT: Right. And under the code of federal
10 regulations I think it is court ordered to obtain medical
11 records and then subpoena to obtain testimony. We will be
12 at ease a few minutes. Mr. Lewis, please step down and
13 you can't talk to your lawyer, you can talk to your
14 lawyer, just don't talk about your testimony. We will be
15 at ease.

16 MR. WISE: Out of abundance of caution we will not
17 have a conversation.

18 (Whereupon, a short break was taken.)

19 THE COURT: Let's bring the jury in, please.

20 (Whereupon, the jury came into open court at
21 approximately 3:10 p.m.)

22 THE COURT: The record should reflect the jury is
23 back and we will resume with the examination of Mr. Lewis.
24 Ms. Mayes, you can cross.

25 MS. MAYES: Yes sir, Your Honor.

1 CROSS-EXAMINATION

2 By Ms. Mayes:

3 Q Now, Mr. Lewis, if I understand your testimony
4 correctly, you first met Ms. Hepburn in 2007, is that
5 correct?

6 A Yes, ma'am.

7 Q And you dated briefly for that period of time, for
8 about a month or so?

9 A Yes, ma'am.

10 Q And then she discovered that she was pregnant with
11 Victim and as a result of that she made the decision to
12 reconcile with her husband, Daniel Hepburn, correct?

13 A Yes, ma'am.

14 Q So, prior to learning that she was pregnant with
15 Audrina she was seeing both you and Daniel at the time?

16 A To my knowledge it wasn't at the same time.

17 Q Well, how did you know that the baby was Daniel's and
18 not your baby?

19 A She told me she was about eight weeks into the
20 pregnancy and we had not had sexual relations during that
21 time period.

22 Q All right. In other words, you had had sexual
23 relations with her closer or not as long as eight weeks
24 prior?

25 A That is right.

1 Q Okay. So she and Daniel reconcile and then
2 ultimately when their marriage did not work out you and
3 she started seeing each other again in March of 2008,
4 correct, I am sorry, March of 2009, correct?

5 A Yes, ma'am.

6 Q And for about that six month period when y'all dated
7 it was normal for you to spend several nights a week at
8 her home?

9 A Yes, ma'am.

10 Q And to drop by during the day when she was there with
11 the kids and her parents were at work?

12 A Yes, ma'am..

13 Q And it wasn't unusual according to your direct
14 testimony to help out with the kids, correct?

15 A That wasn't unusual, no.

16 Q That might include giving them a bottle?

17 A Yes, ma'am..

18 Q Helping with their dinner?

19 A Yes, ma'am..

20 Q Or their lunch?

21 A Yes, ma'am.

22 Q Changing diapers I believe was your testimony?

23 A Yes, ma'am.

24 Q And I believe on this particular night you even
25 helped Owen get dressed after his bath, correct?

1 A That's correct.

2 Q So you helped Owen get dressed and she helped Victim
3 get dressed?

4 A Yes, ma'am.

5 Q And on previous occasions, I believe your testimony
6 was, that she, you would go into her room?

7 A Yes ma'am, sometimes.

8 Q For what purpose?

9 A If I heard her cry.

10 Q And then what would happen?

11 A I would assist why she was crying and either take her
12 to her mother or give her a bottle or something. It was
13 usually if she had dropped her bottle from the crib I
14 would just give it to her.

15 Q So in other words if she had a bottle with her in the
16 crib and she tossed it to the floor you would go in and
17 take the bottle and then hand it back to her?

18 A Yes, ma'am. If I heard her cry or anything.

19 Q Is that something that would make her cry?

20 A Yes, ma'am.

21 Q What are other things that would make her cry?

22 A I remember that she started teething, that was about
23 the only other thing that I knew that would make her cry.

24 Q When she was teething, how many nights had you been
25 over there when she was teething?

1 A Honestly I didn't know that she was teething until
2 Ashley informed me and that was about around the beginning
3 of October that she mentioned that she would be fussy.

4 Q So about two weeks before this?

5 A Yes, ma'am.

6 Q She had been fussy since she was teething and was
7 that keeping her up some nights?

8 A Yes ma'am, I believe.

9 Q To where she didn't want to go to sleep?

10 A Do you mean Audrina?

11 Q Right.

12 A Yes, I would imagine so.

13 Q Well, what did you observe, was she crying more than
14 usual?

15 A As far as I was concerned not really.

16 Q Had you seen Ms. Hepburn give her Orajel on any
17 previous occasion?

18 A Not that I recall specifically.

19 Q Now, your testimony on direct examination was that
20 according to you Ashley was stressed that day?

21 A Yes, ma'am.

22 Q And your testimony was that she was stressed because
23 she didn't get the job at Sykes?

24 A Yes, ma'am.

25 Q But you also had applied for a job at Sykes that same

1 week, correct?

2 A I did.

3 Q And you didn't get the job either, correct?

4 A No ma'am, I never got a call back from them.

5 Q Okay. So is it safe to say that both of you were
6 stressed about that situation?

7 A I guess it is safe to say that, yes.

8 Q And then to add to that there had been an argument
9 earlier in the day that caused her to slap you, correct?

10 A Yes, ma'am.

11 Q You used the word, slap, what do you mean by that?

12 A She slapped me in the face, openhanded.

13 Q Which hand?

14 A It was her left hand, she was predominantly left
15 handed.

16 Q And what was it that you had done to cause her to
17 slap you in the face?

18 A At first we were just playing around and then she hit
19 me kind of hard with a pillow and I said something to her
20 that she didn't particularly like. I guess you want to
21 know what I said?

22 Q Yes.

23 A I called her a bitch.

24 Q And then she slapped you with her left hand?

25 A Yes, ma'am.

1 Q Did it leave a mark?

2 A Briefly, it didn't leave a mark for very long.

3 Q And then what happened next?

4 A I went home.

5 Q So you were in an argument it is safe to say?

6 A Yes, ma'am.

7 Q That ends in you calling her a bitch and her slapping
8 you in the face?

9 A Yes, ma'am.

10 Q And so you leave?

11 A Yes, ma'am.

12 Q And y'all talked on the phone a few times throughout
13 the day, correct?

14 A Correct.

15 Q And later on you come back to the house that evening?

16 A Yes, ma'am.

17 Q And when you get there David Crumley and her mom,
18 Doris Davis, were already in bed, right?

19 A Yes, ma'am.

20 Q In fact, you never saw them at any point during the
21 night?

22 A No, ma'am.

23 Q And there is no question that Victim appeared okay?

24 A Yes, ma'am.

25 Q She was her normal self?

1 A Yes ma'am, during the day she was her normal self.

2 Q Well you saw her that night too when you got there,
3 didn't you?

4 A Yes, ma'am.

5 Q And when you got there you and Owen and Victim, you
6 played around a bit?

7 A Yes, ma'am.

8 Q And do you remember watching TV with the kids?

9 A Yes ma'am, I do.

10 Q And everything seemed fine with them?

11 A Yes, ma'am.

12 Q Do you remember seeing Ashley give Victim a bottle?

13 A Not particularly, no, I don't.

14 Q Do you remember seeing a bottle for Victim?

15 A I assume she had a bottle, she always did.

16 Q On that particular night you don't recall seeing her
17 have a bottle?

18 A No, ma'am.

19 Q You don't recall Ashley giving Victim a bottle?

20 A No, ma'am.

21 Q So what is the next thing you remember after you and
22 the kids were playing around?

23 A I just remember she was getting Victim and Owen
24 ready for bed.

25 Q Getting them ready for bed and is that when,

1 according to your earlier testimony, she spanked Owen,
2 correct?

3 A Yes, ma'am.

4 Q And you didn't see that, your testimony is that you
5 heard it from another room?

6 A I saw her yank him up by the arm and take him into
7 another room.

8 Q What do you mean by yank him up by the arm?

9 A She jerked him up by the arm and took him into the
10 bathroom:

11 Q Well, show us what you mean?

12 A She just jerked him up by the arm and dragged him
13 into the bathroom, I don't really know how to demonstrate
14 that.

15 Q All right. Is that something you had witnessed
16 before?

17 A Never.

18 Q Now, according to your testimony, after that occurred
19 she then was in the room with Owen?

20 A Yes, ma'am.

21 Q And Audrina was in her room in the crib?

22 A Yes, ma'am.

23 Q And then you went back to the living room to watch
24 Monday night football, correct?

25 A Yes, ma'am.

1 Q We are talking about this living room here, this is
2 State's exhibit 32. Where were you watching TV from?

3 A Would you like for me to point on the screen?

4 Q Yes. So, you are right here on this couch, the L
5 shaped couch, correct?

6 A Yes, ma'am.

7 Q Now, directly behind the couch is a wall?

8 A Yes, ma'am.

9 Q What is behind this wall?

10 A The kids play room.

11 Q The kids play room?

12 A Well, their room.

13 Q Their room, you mean the room that Victim was
14 sleeping in?

15 A Yes, ma'am.

16 Q All right. Let's take a look at the diagram to be
17 sure that we are clear. This is Victim room, correct?

18 A Correct.

19 Q And this is Ashley's room?

20 A That is right.

21 Q This is the kitchen?

22 A Yes, ma'am.

23 Q And then here is the living room, den area where you
24 were watching television, correct?

25 A Yes, ma'am.

1 Q So, right here in this L shaped is the L shaped couch
2 which backs up directly to Victim room, correct?

3 A Yes, ma'am.

4 Q So that is where you were located?

5 A Yes, ma'am.

6 Q Now, is that the first time you had ever watched TV
7 here on this couch?

8 A No, ma'am.

9 Q There had been many other occasions, correct?

10 A Yes, ma'am.

11 Q And all of those other occasions you could hear
12 Victim when she was crying?

13 A Not all of them, I guess.

14 Q Were there occasions where you could hear her crying
15 when you were on the couch?

16 A Yes, ma'am.

17 Q All right. Now, your testimony is as you continued
18 to watch Monday night football you then heard footsteps,
19 correct?

20 A Yes, ma'am.

21 Q Well, did anything happen between then, between when
22 you heard the footsteps and when you had first appeared on
23 the couch?

24 A I had checked on Victim at one point before then but
25 nothing else really.

1 Q Let's talk about that. When you say you checked on
2 Victim, Ashley is in her room with Owen, correct?

3 A Correct.

4 Q And Victim had been put down in her crib, I refer
5 you to State's exhibit 35. This is Ashley's room looking
6 directly across the hall into Victim room?

7 A Yes, ma'am.

8 Q So on, for what purpose had you checked on Victim
9 earlier in the night?

10 A It was just something that I did. I think I used the
11 bathroom or something and I just stopped and looked in the
12 room to make sure she was okay.

13 Q So the door to her room was open?

14 A It was cracked.

15 Q Well when you say you stopped to look into her room
16 what does that require you to do?

17 A I would have to push the door open a little bit.

18 Q So, your understanding is that Victim is in there
19 sleeping but you pushed open the door to check on her as
20 she was sleeping?

21 A Yes, ma'am.

22 Q And according to you I believe she popped her head
23 up?

24 A She did.

25 Q So, she was fine?

1 A She was fine.

2 Q Let's take a look at your statement which is the
3 written statement, State's exhibit 30. And you recognize
4 this as the statement that you gave to Officer Ben
5 Blackmon, correct?

6 A Yes, ma'am.

7 Q Now just to clarify where we are in the timeline of
8 events. Where we are in the timeline of events, you and
9 Ashley are together at the home. From the home EMS
10 arrives, y'all go to Self Hospital in Greenwood, correct?

11 A That is correct.

12 Q And once you arrive in Greenwood there are officers
13 who show up to speak with you, correct?

14 A Yes, ma'am.

15 Q Ben Blackmon who took this statement, he is one of
16 them?

17 A Yes, ma'am.

18 Q Deputy Garrison who was in here yesterday, he was
19 another one?

20 A Yes, ma'am.

21 Q And then at some point there was also a DSS worker,
22 Dee Deal, the gentleman who was here earlier today and
23 yesterday?

24 A Yes, ma'am.

25 Q All three of those, of those personnel spoke with you

1 at Self Hospital in Greenwood?

2 A I don't remember if the DSS case worker ever spoke
3 with me.

4 Q Do you remember him being present?

5 A Not exactly I don't.

6 Q Also while you were at Greenwood Dr. Curry who was
7 working with Victim, she spoke with you, didn't she?

8 A If she did I don't remember.

9 Q You don't remember speaking with medical staff?

10 A Not a doctor, I remember briefly speaking with the
11 Chaplain. I don't remember speaking with a doctor, no.

12 Q So your testimony is that you don't recall speaking
13 to any medical personnel?

14 A No, ma'am.

15 Q You knew why Victim was in the hospital?

16 A Not at that point and time, I just knew that
17 something was wrong with her.

18 Q Now, Mr. Lewis, after you spoke with law enforcement
19 here at the hospital they asked you to come to the Laurens
20 County Sheriffs Department, right?

21 A Yes, ma'am.

22 Q And this was in the early morning hours of October
23 the 13th?

24 A Yes, ma'am.

25 Q So, you left the hospital here in Greenwood and you

1 went directly to the sheriffs department, so you never
2 went to Greenville Hospital?

3 A No, ma'am.

4 Q So you arrive here at the sheriffs department and you
5 waived your Miranda rights, I believe we have talked about
6 previously, you were advised of your Miranda rights,
7 correct?

8 A Yes ma'am, I was.

9 Q You waived those Miranda rights, State's exhibit 31,
10 the time on this is 6:20 a.m., correct?

11 A Yes, ma'am.

12 Q So at 6:20 a.m. you waive your Miranda rights and
13 then ultimately you give this written statement that I am
14 holding in my hand to Officer Ben Blackmon, Investigator
15 Ben Blackmon?

16 A Yes, ma'am.

17 Q And you knew full well he was an investigator with
18 the sheriffs department?

19 A Yes ma'am, I did.

20 Q Now, there is no question in your mind that you knew
21 that Victim had been injured as a result of child abuse?

22 A At that point and time, no.

23 Q No?

24 A I wasn't exactly sure what was wrong with her.

25 Q Did you not testify earlier on direct examination

1 that when you were at Greenwood Hospital you were
2 questioned about shaken baby?

3 A Yes, ma'am.

4 Q You heard that?

5 A Yes, ma'am.

6 Q Your testimony was is that you heard that from
7 medical personnel and from law enforcement?

8 A I remember hearing it from law enforcement, yes.

9 Q That was at the hospital in Greenwood, correct?

10 A Yes, ma'am.

11 Q So you are not trying to tell us that you heard at
12 the hospital in Greenwood that Victim was severely
13 injured and that it was shaking baby, at a minimum and
14 that you didn't understand that when you met with this
15 officer at Laurens County hours later that he was asking
16 you about what had happened to Victim?

17 A Yes ma'am, I did understand what he was asking.

18 Q Okay. Let's take a look at this particular
19 statement. It is your name at the top, Richard Brandon
20 Lewis. The time on this is 6:42 a.m., correct?

21 A That is correct.

22 Q So at this point Audrina had been transferred to
23 Greenville Hospital and they are working to save her live
24 and you are at the Laurens County Sheriffs Office?

25 A Yes, ma'am.

1 Q This statement written by B. Blackmon at my request.
2 Your statement was, I got to Ashley Nicole Hepburn's house
3 around 8:30 on October 12th of 2009. Your statement was,
4 we sat in the living room and watched TV. Ashley was
5 going to give the kids a bath. Let me stop you right
6 there and ask you, did you see the kids getting a bath?

7 A I believe I got there when they were getting out of
8 the bath.

9 Q I helped Owen get dressed in his pajamas while Ashley
10 dressed Audrina for bed. After that she put Victim to
11 bed for a little bit. And when you say she put her to
12 bed, where are you referring to?

13 A She put her in her crib.

14 Q We went and watched TV a little bit and she got her
15 out of the crib. Then she put her back. What happened
16 after she got her out of the crib while you were watching
17 TV?

18 A She brought her into the living room for a little
19 bit.

20 Q So Victim came from the crib back into the living
21 room with you and Owen and Ashley?

22 A Yes, ma'am.

23 Q And she was fine at that point?

24 A Yes ma'am, at that point she was fine.

25 Q Then she helped Owen brush his teeth. While they

1 were laying down I said I was going to watch football. I
2 watched the game until 11:00 or so and went to the
3 bathroom and stuck my head in the door and Victim popped
4 her head up.

5 A Yes, ma'am.

6 Q So that is the time that you had just told us about a
7 few moments ago?

8 A Yes, ma'am.

9 Q When you testified that you had looked in on her as
10 she was in her room?

11 A Yes, ma'am.

12 Q So, she popped her up up and she certainly appeared
13 okay at that point, correct?

14 A Yes, ma'am.

15 Q Then I shut the door. I didn't hold her then but I
16 did earlier in the night. I didn't shake her or anything.
17 I tried to wake Ashley up and she was tired. When you say
18 you tried to wake Ashley up where was she?

19 A She was in the bed with Owen.

20 Q Then I tried to give her some hash but she didn't
21 want it. When you say you tried to give her some hash,
22 who are you referring to?

23 A Ashley.

24 Q And that was the hash that your grandmother made?

25 A Yes, ma'am.

1 Q So, I went back to the living room and I put in a
2 movie, the walls were thin so I could usually hear Audrina
3 crying.

4 A Yes, ma'am.

5 Q And here they let you look over the statement and add
6 anything that you needed to add, correct?

7 A Correct.

8 Q And at some point you looked over the statement and
9 decided to add in and then initial the words, wasn't
10 crying, right here in the upper text, wasn't crying, so
11 you could clarify that the walls were thin and usually you
12 could hear Audrina crying but you did not hear her crying.

13 A That is what I put in the statement, yes.

14 Q Okay. So, what you put in the statement was that
15 **Victim** was fine and you had not heard her crying?

16 A Yes, ma'am.

17 Q I usually check on her during the night. I looked in
18 on her about 1:20 and she didn't stick her head up. So I
19 thought she was asleep. When I seen her she was laying on
20 her stomach with her head on the rails on the crib. So,
21 your last statement before you described finding Audrina
22 unresponsive in her crib, your last statement had been
23 that you had not heard her crying and you had last seen
24 her fine?

25 A Yes, ma'am.

1 Q I woke Ashley up and I told her I couldn't get
2 Victim awake, we were panicking. We got her mother and
3 her boyfriend up, called 911. Then we all huddled around
4 her until the EMS came. I remember looking at her lips
5 and thought she had a seizure. EMS got there really
6 quick. Then we went to the hospital from there. End of
7 statement with your signature, correct.

8 A Yes, ma'am.

9 Q And this is 6:42 a.m. on October the 13th while
10 Victim is still alive and still in the hospital?

11 A Yes, ma'am.

12 Q In fact she is in pediatric intensive care?

13 A I wasn't aware at that time but yes ma'am, I assume.

14 Q You knew that this child had not regained
15 consciousness, correct?

16 A From what I was told, yes.

17 Q And you signed this affirming that it is a true and
18 accurate statement?

19 A Yes, ma'am.

20 Q All right. Now, when you talk about seeing her lips
21 and you thought she had a seizure, what is it that made
22 you think she had a seizure?

23 A I remember seeing blood on her mouth and on, I know
24 that whenever I had seizures that I would usually bite my
25 tongue and I would have blood on my mouth as well.

1 Q And where did you see blood on her mouth?

2 A I saw on the outside of her lips.

3 Q Where was she when you saw blood on her mouth?

4 A She was in my arms.

5 Q That is the first time you saw blood was when she was
6 in your arms?

7 A When I picked her up out of the crib, yes.

8 Q So, you saw her bleeding in the crib?

9 A Yes, ma'am.

10 Q And that is not in this statement, is it?

11 A No, ma'am.

12 Q Now, five hours go by, you are still at the law
13 enforcement center?

14 A Yes; ma'am.

15 Q They haven't let you leave, have they?

16 A No, ma'am.

17 Q Because they are still interviewing you?

18 A Yes, ma'am.

19 Q And you could leave if you wanted to but you knew
20 that they still wanted more information from you?

21 A Yes, ma'am.

22 Q They still thought that you had more to say, that you
23 knew more, correct?

24 A That is correct.

25 Q And I believe you previously testified in this case,

1 giving depositions, I believe there has been discussions
2 about you testified at a DSS hearing, correct?

3 A That is correct.

4 Q And do you recall making the statement before that
5 law enforcement didn't seem satisfied with your first
6 statement. In other words, they didn't seem to believe
7 it?

8 A Yes, ma'am.

9 Q The reason that they didn't seem to believe it is
10 because it wasn't true, correct?

11 A That is correct.

12 Q And after five hours go by, no longer 6:42 a.m., it
13 is now 11:56 a.m. you give this second statement, correct?

14 A Yes, ma'am.

15 Q And then this second statement which is timed 11:56
16 a.m. you also affirmed this is a true and accurate
17 statement, correct?

18 A Yes ma'am, I do.

19 Q And in this statement you say on October 12th of 2009
20 I went to my girlfriend's house, Ashley Hepburn, around
21 8:30 or 9:00 p.m. We started watching TV and ended up
22 getting into an argument over her telling me how to be a
23 better parent. Ashley got mad because I told her not to
24 let her son to get away with everything that he does. I
25 then went to lay down on her bed and Ashley told Owen, her

1 son, to go brush his teeth in which Owen was apprehensive
2 about brushing his teeth at which time Ashley then gave
3 Owen what you call an intense spanking?

4 A Yes, ma'am.

5 Q And you had never mentioned that to law enforcement
6 before, had you?

7 A No, ma'am.

8 Q Ashley got Owen to brush his teeth and then put
9 Victim in her crib. Ashley then went to bed with Owen
10 and I went into the living room to watch TV. I watched
11 the football game and then around 11:00 in the p.m. I went
12 to check on Audrina. When I went to check on her at that
13 point Victim was fine laying in the crib. Is this the
14 time you mentioned earlier where she had popped her head
15 up?

16 A Yes, ma'am.

17 Q I started watching TV again. Then around 12:45 in
18 the morning I heard Audrina crying in her room. That is
19 different than your first statement, isn't it?

20 A Yes, ma'am.

21 Q In your first statement you had gone in, after the
22 statement was signed and asked the officer to add the
23 words, wasn't crying and then you initialed it, correct?

24 A That is correct.

25 Q This time you are saying that at 12:45 a.m. I heard

1 Victim crying in her room?

2 A Yes, ma'am.

3 Q I then heard some loud footsteps coming from the back
4 of the house where Ashley and Owen were located at.

5 Victim then started crying even louder as if she was
6 being shaken.

7 A Yes, ma'am.

8 Q You had never mentioned that before, had you?

9 A No, ma'am.

10 Q I then went to check on Ashley in Ashley's bedroom.
11 I asked Ashley if she wanted something to eat and Ashley
12 said no. But I just made something to eat for myself.
13 Let me understand correctly, you went to Ashley's room to
14 check on Ashley, you did not check on Victim ?

15 A That is correct.

16 Q After I ate I then went to check on Victim in
17 Victim bedroom. Victim was laying in her crib face
18 down and was hardly breathing. I also noticed that there
19 was blood on the outside of Victim mouth. I begin to
20 panic and then picked Victim up out of the crib and then
21 went and woke Ashley up. Ashley then got up and went to
22 the bathroom to urinate while I was still holding Victim.
23 Ashley saw then that Victim couldn't hold her head up and
24 became very frantic. I then gave Ashley Victim. And you
25 gave her Audrina to hold. We then and woke up Ashley's

1 mother, Doris Davis and her boyfriend, David in their
2 bedroom. We then laid Audrina on the floor on top of a
3 blanket and made sure that her head stayed still. David
4 then called EMS in which EMS arrived within ten minutes
5 and took Victim to Self Regional Healthcare. EMS then
6 picked Audrina up at approximately 1:30 in the morning,
7 correct?

8 A Yes, ma'am.

9 Q End of statement.

10 A Yes, ma'am.

11 Q Then you also signed this one as true and correct,
12 correct?

13 A Yes ma'am, I did.

14 Q But both can't be correct, can they?

15 A No, ma'am.

16 Q So is it your testimony that you heard the footsteps
17 before you asked her to watch the movie or after you asked
18 her to watch the movie?

19 A After.

20 Q Is it your testimony that you heard the footsteps
21 before you asked her if she wanted something to eat or
22 after?

23 A I believe that was before.

24 Q So then there would be at least two times you went
25 into Ashley's room in addition to checking on Victim

1 throughout the night, correct. You went in to ask her to
2 watch a movie and then according to your testimony you
3 went in at a different time to ask her for something to
4 eat?

5 A Yes, ma'am.

6 Q And then after the last time when you went in to ask
7 her for something to eat, your testimony was that you then
8 ate the hash, where did that happen at?

9 A In the living room.

10 Q Then you went back to the living room and all of that
11 happened before you ever went in to check on **Victim**,
12 correct?

13 A Yes, ma'am.

14 Q Now, Mr. Lewis, you testified throughout this case
15 that you routinely go into **Victim** room and check on
16 her, even when she is quiet?

17 A Yes, ma'am.

18 Q Your testimony earlier that when you went to the
19 bathroom you opened the door and checked on her even
20 though she wasn't making a sound and she was just a
21 sleeping baby, correct?

22 A Correct.

23 Q And that is the time she popped her head up?

24 A Yes, ma'am.

25 Q But this time your testimony was that you heard the

1 loud footsteps go in there and you heard Victim voice
2 breaking and according to your testimony it sounded as if
3 she was being shaken and you didn't check on her, did you?

4 A No, ma'am. At the time it didn't occur to me that
5 she would have did something like that, in retrospect I
6 know that she did.

7 Q All right. So all the other times you check on her
8 when she is quiet and this time, according to your
9 testimony, she was crying, then you hear her voice
10 breaking. After you hear the stomping and all of a sudden
11 this time you don't check on her at all, you go and check
12 on Ashley to see if she wants something to eat and then
13 you go in the living room, correct.

14 A Correct.

15 Q And how much time passed between when you say you
16 heard the stomping and when you heard a sound that sounded
17 as if she was being shaken and then when you, according to
18 your testimony, went in the room and found her
19 unresponsive?

20 A Ten minutes at the most.

21 Q Ten minutes?

22 A Yes, ma'am.

23 Q Do you recall testifying previously that it was at
24 least fifteen minutes?

25 A It could have been ten or fifteen minutes.

1 Q All right. So that is something that you may have
2 testified to before?

3 A Yes, ma'am.

4 Q Now also between when you were at Self Hospital and
5 you first met with Officer Garrison and Officer Blackmon
6 and the Chaplain, Alex Brown and the DSS worker, Dee Deal,
7 after all of that and before you gave those statements to
8 law enforcement you placed a call to Ashley's cell phone,
9 didn't you?

10 A Could you repeat what time it was again?

11 Q Yes. Do you recall placing a telephone call to
12 Ashley's cell phone at approximately 5:38 a.m. in the
13 early morning hours of October 13th?

14 A Yes, ma'am.

15 Q All right. So you placed that call to her right
16 before you were being interviewed by law enforcement,
17 correct?

18 A Correct.

19 Q And you knew that you were at the law enforcement
20 center in order to be interviewed about these events,
21 correct?

22 A Correct.

23 Q At some point and time, Mr. Lewis, between when you
24 were first giving that statement at about 6:20 a.m. and
25 when you gave that second statement at 11:56 a.m. you knew

1 they didn't believe the first statement, you knew that
2 they knew that you weren't telling everything, correct?

3 A Correct.

4 Q And you knew that you could end up being arrested?

5 A I didn't assume that I would be arrested.

6 Q You didn't?

7 A No, ma'am.

8 Q Then how come after these events and after your
9 statements when Officer Plaxico showed up at your house to
10 make contact with you to see if you had anything more to
11 add you went running out of the house?

12 A Yes, ma'am.

13 Q You fled?

14 A Yes, ma'am.

15 Q Knowing he is a law enforcement officer?

16 A Yes, ma'am.

17 Q Because you thought he was there to arrest you?

18 A I thought that was possible.

19 Q All right. And your previous testimony, not just
20 today but on other occasions as well is that the reason
21 you did not tell the truth in this statement or what you
22 claimed to be the truth is because you didn't want to get
23 Ashley in trouble, correct?

24 A Correct.

25 Q You didn't want to get her in trouble?

- 1 A No, ma'am.
- 2 Q It might affect your relationship?
- 3 A I loved her.
- 4 Q Mr. Lewis, that child was in the hospital fighting
5 for her life and you were lying to the police about what
6 you knew in order to save your relationship with your
7 codefendant, that is correct, yes or no?
- 8 A I was just in love with her, I didn't want to believe
9 that she could hurt her.
- 10 Q She was more important to you at that moment than
11 **Victim** was, wasn't she?
- 12 A No ma'am, I wouldn't say that.
- 13 Q Did you tell the truth in this statement?
- 14 A No, ma'am.
- 15 Q Now, this is the bathroom of the home, do you
16 recognize that?
- 17 A Yes ma'am, I do.
- 18 Q What happened to the towel that was in the towel
19 rack?
- 20 A I don't know, it is not there in the picture.
- 21 Q How did that towel get in **Victim** crib?
- 22 A I am not sure.
- 23 Q You don't know?
- 24 A No, ma'am.
- 25 Q How did you find **Victim** ?

1 A I just found her laying face down unresponsive.

2 Q According to you that was against the rails?

3 A Yes, ma'am.

4 Q Against the bumper?

5 A Yes, ma'am.

6 Q Who took this towel and wiped Victim mouth, wiped
7 her blood and saliva?

8 A I don't know.

9 Q After you fled from Investigator Plaxico Ashley was
10 arrested, wasn't she?

11 A Yes.

12 Q You became aware that she was arrested?

13 A Yes, ma'am.

14 Q And after she was arrested the next day Victim died?

15 A Yes, ma'am.

16 Q And then the next day you took an overdose, correct?

17 A Yes, ma'am.

18 MR. WISE: Subject to my previous objection.

19 THE COURT: Overruled.

20 Q You took an overdose and you were treated at the
21 Laurens County Hospital for attempted suicide, correct?

22 A Yes ma'am, I was.

23 Q And then where you went from the Laurens County
24 Hospital is you went to the V.A. Hospital, correct?

25 A Yes, ma'am.

1 Q And at the V.A. Hospital you were treated by a number
2 of medical staff, do you remember being treated by Dr.
3 Vernetta Hill?

4 A Yes ma'am, I do.

5 Q Do you recall stating to Dr. Hill that you had argued
6 with your girlfriend earlier about spanking her son?

7 A I don't think I said we argued about her spanking her
8 son but something of that nature, yes.

9 Q Do you recall reporting to Dr. Hill that the baby was
10 fussy due to teething?

11 A Yes, ma'am.

12 Q Do you recall stating that you saw her, meaning the
13 girlfriend, stomp from her room into the room where the
14 baby was fussy?

15 A I remember telling her that I knew Ashley went into
16 the room. I have never said that I saw her go into the
17 room.

18 Q So, you deny that statement?

19 A Yes, ma'am.

20 Q That you saw her stomp into the room?

21 A Yes, ma'am.

22 Q Nothing further at this time.

23 THE COURT: Mr. Able.

24 CROSS-EXAMINATION

25 By Mr. Able:

1 Q Now, Mr. Lewis, you say that afternoon of October 12,
2 2009 you called Ashley a bitch?

3 A Yes, sir.

4 Q And that is a phrase that you commonly use was
5 bitches and whores on your Facebook page, wasn't it?

6 A No sir, I don't think so.

7 Q You didn't use those phrases on your Facebook?

8 A If it were, I may have.

9 Q You posted some things with those kinds of words on
10 your Facebook, didn't you?

11 A Yes sir, I may have.

12 Q And when you call a woman a bitch wouldn't you expect
13 to get slapped?

14 A Yes sir, I would.

15 Q And you stated earlier, you had testified at a DSS
16 hearing on behalf of the State. You testified for the
17 Department of Social Services, correct?

18 A Yes, sir. I assumed it was.

19 Q But it was the Department of Social Services that
20 subpoenaed you to be there?

21 A Yes, sir.

22 Q And at the time of that testimony you are not a
23 criminal defendant in this case, were you?

24 A No, sir.

25 Q You were charged, that was in May, I believe you were

1 charged in September?

2 A Yes, sir.

3 Q After giving that testimony?

4 A Yes, sir.

5 Q Now on the morning of October 13th you spoke to a lot
6 of people that day?

7 A A lot of law enforcement, yes sir.

8 Q Well, you spoke to Chaplain Brown?

9 A Yes, sir.

10 Q You spoke to Dr. Curry?

11 A I don't remember speaking to a doctor.

12 Q You heard her testimony, didn't you?

13 A Yes, sir.

14 Q You heard her say she spoke to you?

15 A Yes, sir.

16 Q And you heard her say last week that you had found
17 the baby unresponsive?

18 A Yes sir, I remember her saying that.

19 Q And you remember her testimony where she said you
20 confirmed Ashley had gone to bed earlier in the evening?

21 A Yes, sir.

22 Q And you heard Dr. Curry's testimony that you confirm
23 that when you found the baby Ashley was still in that bed?

24 A Yes, sir.

25 Q You told her all of that, didn't you?

1 A I assume I did if she testified to that, yes sir.

2 Q All right. So what you told Dr. Curry that morning
3 was that on the morning of October 13th, was that Ashley
4 had gone to bed, you found the baby and Ashley was still
5 in that same bed with Owen, correct?

6 A Correct.

7 Q You confirmed that, you never said anything about
8 Ashley getting out of bed that morning, did you?

9 A No, sir.

10 Q And you talked to Dr. Brown, I mean, I am sorry,
11 Chaplain Brown?

12 A Yes, sir.

13 Q That is the gentleman that came in and he is the
14 first one that said that you said that morning, that baby
15 doesn't like me but I love her, correct?

16 A Yes sir, he stated that.

17 Q I am sorry?

18 A Yes sir, he stated that.

19 Q And that is what you told him, isn't it?

20 A I don't remember telling him that, no.

21 Q You don't remember telling that, but do you remember
22 telling Dee Deal the same thing?

23 A No sir, I don't remember a conversation with Mr.
24 Deal.

25 Q Okay. Do you remember Dee Deal being in the room

1 when you said the same thing to law enforcement that
2 morning?

3 A To be honest I don't remember him being in the room.

4 Q Okay. So you got two people, a Chaplain and a DSS
5 worker who were not together, you were with one and then
6 you were with the other and they both said that you said
7 the same exact thing. Doesn't that strike you odd?

8 A Yes, sir.

9 Q But you don't remember that?

10 A I don't remember making that remark, no sir.

11 Q You don't remember making it in the presence of
12 either Chaplain Brown or Dee Deal?

13 A No, sir.

14 Q And when you spoke to Chaplain Brown that morning, he
15 is the first one y'all saw when y'all got to Self
16 Regional, correct?

17 A Yes, sir.

18 Q And you heard his testimony last week?

19 A Yes, sir.

20 Q And his testimony, of course, was that you said that
21 Ashley had gone to bed with Owen, correct?

22 A That is correct.

23 Q And that you were the only one up?

24 A Yes, sir.

25 Q And that is what Dr. Curry testified too, that you

1 confirmed, you were the only one out of bed, correct?

2 A Yes, sir.

3 Q And that you being the only one up, you found the
4 baby and took the baby to Ashley?

5 A Yes, sir.

6 Q Wasn't that Chaplain Brown's testimony?

7 A Yes, sir.

8 Q That is what you told him?

9 A Yes, sir.

10 Q You didn't say a thing about hearing any footsteps or
11 Ashley getting out of bed that night?

12 A No sir, I didn't, I don't remember talking with them,
13 I am sorry, can you repeat the question.

14 Q You want me to repeat the question?

15 A Yes, sir.

16 Q What I said is, what you told Dr. Brown that morning,
17 I mean, I am sorry, Chaplain Brown that morning was the
18 same thing you had told Dr. Curry that morning. You heard
19 their testimony, correct?

20 A Yes sir, I heard their testimony.

21 Q And their testimony was that Chaplain Brown and Dr.
22 Curry, they had met with you and you confirmed for them
23 that Ashley had gone to bed with Owen, correct?

24 A Correct.

25 Q And that you were the only one up, correct?

- 1 A Yes, sir.
- 2 Q That you went in there at some point and you found
- 3 Audrina, correct?
- 4 A Correct.
- 5 Q And you took the child to her mother, Ashley, who was
- 6 still in bed with Owen, correct?
- 7 A Correct.
- 8 Q And that was their testimony?
- 9 A Yes, sir.
- 10 Q And that is what you told them that morning?
- 11 A Again, I don't personally remember speaking with
- 12 either of them to that extent but I assume that they are
- 13 telling the truth, yes.
- 14 Q All right. And you spoke, that morning you spoke to
- 15 Officer Garrison at the Self Regional Hospital?
- 16 A Yes, sir.
- 17 Q And you told him the same thing, didn't you?
- 18 A Yes, sir.
- 19 Q You were the only one up, Ashley had gone to bed and
- 20 you found the child and you took the child to its mother?
- 21 A Yes, sir.
- 22 Q You didn't tell him anything about hearing these
- 23 footsteps or the sounds of a baby being shaken or anything
- 24 like that, did you?
- 25 A No sir, I didn't.

1 Q You don't remember Dee Deal being there?

2 A No sir, I do not.

3 Q But you heard his testimony?

4 A Yes, sir.

5 Q And it is the same as everybody else's that morning,
6 when the other people that you talked to, correct?

7 A Yes, sir.

8 Q Nothing about any footsteps or babies being shaken or
9 anything like that?

10 A That is correct.

11 Q And you also spoke to law enforcement at Self
12 Regional?

13 A Yes, sir.

14 Q And you told them the same thing?

15 A Yes, sir.

16 Q Now, you want to keep adding to your story. In the
17 times that I have talked to you previously and your
18 statements that you have given, you never said anything
19 about busting up in the bathroom when you allege that
20 Ashley was urinating, did you, or going to the bathroom.
21 You never said anything about that before, have you?

22 A Yes sir, I have said that.

23 Q You have said that before?

24 A I made that apparently clear to law enforcement.

25 Q In your statement you did?

1 A It may not say it exactly like that on my statement
2 but I do remember telling them that she went to the
3 bathroom before she took Victim from me.

4 Q On the second statement, Ashley then got up and went
5 to the bathroom to urinate while I was still holding
6 Victim. You never said anything about you busted into
7 the bathroom to alert her to this situation, did you, you
8 never said that before, had you?

9 A I have told that to law enforcement, yes I have said
10 that.

11 Q Is it in one of these statements?

12 A No sir, it is not in the statement.

13 Q You had never said anything ever before, about Ashley
14 being stressed that day, have you?

15 A Yes sir, I told law enforcement that she was stressed
16 for not getting the job.

17 Q Is that in one of the statements?

18 A No, sir.

19 Q And at 5:38, the telephone call that you placed to
20 Ashley, you didn't talk to her at that time, did you?

21 A No, sir.

22 Q All right. Now, this happened on October 13th of
23 2009 and on October 18th of 2009 you tried to kill
24 yourself?

25 A Yes, sir.

1 Q It was the day after Victim died?

2 A Yes sir, it was.

3 Q Now, what day was it, was it before that that you
4 tried to run from Officer Plaxico?

5 A Yes, sir.

6 Q So, he came to see you and you ran thinking you were
7 going to be arrested and then the day after this child
8 dies you try to kill yourself?

9 A Yes, sir.

10 Q And you were admitted out her to the Laurens
11 Hospital?

12 A Yes, sir.

13 Q And then you were transferred to the V.A. Hospital?

14 A That's correct.

15 Q And they kept you under the care of a psychiatrist
16 for a while?

17 A For about four days, I think.

18 Q Okay. And after you got out you were in the care of
19 a psychiatrist?

20 A Yes, sir.

21 Q As a matter of fact, before this event you were under
22 the care of a psychiatrist, weren't you?

23 A Yes, sir.

24 Q Through the Veteran's Administration?

25 A Yes, sir.

1 Q You have been under the care of a psychiatrist, I
2 believe, since March of '09?

3 A Approximately, yes.

4 Q Now, you were first under the care of a psychiatrist
5 when you were about twelve years old, weren't you?

6 A Yes, sir.

7 Q Why was that?

8 A My parents were going through a divorce and my father
9 shot my grandfather and my mother took the gun from him
10 and shot him.

11 Q Your mother took the gun from who and shot who?

12 A My mother took the gun from my father and shot him.

13 Q And you were under the care of a psychiatrist then as
14 well, correct?

15 A Yes, sir.

16 Q Now, so then from your cross-examination with Ms.
17 Mayes, you go down to the V.A. and you try to change your
18 story again, correct. You say about the footprints or the
19 loud sounds of the feet going across the home and then you
20 go down there and then you build on it again and you say,
21 I saw her going in there?

22 A No, sir.

23 Q You didn't say that?

24 A No sir, I didn't say that I saw her go in the room.

25 Q Now, I want you to look at your first statement with

1 me, it has been marked State's exhibit number 30 for
2 evidence. You recognize that, right?

3 A Yes sir, I do.

4 Q And that is the first statement you gave to law
5 enforcement that day, October the 13th?

6 A That is correct.

7 Q And that is a two-page statement and bears your
8 signature at the bottom?

9 A Yes, sir.

10 Q Now, Ms. Mayes eluded to it, but I want to read it
11 for you. It says down at the bottom, I have read each
12 page of this statement consisting of two pages, each page,
13 which bears my signature and corrections, if any, bears my
14 initials and I certify the facts contained herein are true
15 and correct. Isn't that what it says?

16 A Yes, sir.

17 Q And it says that on both pages, correct?

18 A Yes, sir.

19 Q So when you signed this statement at 6:42 a.m. on
20 October 13th of 2009 you were certifying that everything
21 in here was correct?

22 A Yes, sir.

23 Q Officer Ben Blackmon wrote this statement at your
24 request?

25 A Yes sir, he wrote the statement.

1 Q And he wrote it for you as you dictated it to him?

2 A He would ask questions and assert things in which I
3 would answer and he would write down.

4 Q He wrote it down as you dictated to him, correct?

5 A Correct.

6 Q And now, let's look at this for a moment. It says
7 that, follow along with me, I got to Ashley Tolley
8 Hepburn's house around 8:30 on October 12th of 2009.

9 Correct?

10 A Correct.

11 Q And it says that you, we sat in the living room and
12 watched TV. Ashley was going to give the kids a bath.

13 Correct?

14 A Correct.

15 Q At that point Ms. Davis and Mr. Crumley had gone to
16 bed, correct?

17 A That is correct.

18 Q I helped Owen get dressed in his pajamas while Ashley
19 dressed Victim for bed. Correct?

20 A Yes, sir.

21 Q After that she put Victim to bed for a little bit,
22 who is she?

23 A That would be Ashley.

24 Q Then we went and watched TV a little bit and she
25 gave, watched TV a little bit and she got her out of the

1 crib. Correct?

2 A Correct.

3 Q Then she put her, then she put her back. Who put who
4 back?

5 A Ashley put **Victim** back in her crib.

6 Q Okay. So, she put the child down, she put Audrina in
7 the crib, Audrina was in the crib for a while. Was that
8 when y'all went outside to smoke a cigarette?

9 A It may have been.

10 Q Do you remember that?

11 A Yes sir, I remember going out and smoking a
12 cigarette.

13 Q That is not in your statement, is it?

14 A No, sir.

15 Q It is not in either statement, is it?

16 A No, sir.

17 Q So, y'all go outside, come back in and Ashley goes
18 and gets **Victim** and brings her into the living area where
19 y'all were?

20 A Yes, sir.

21 Q And you didn't see any injuries or problems with
22 **Victim** at that time?

23 A Not at that time.

24 Q Didn't see any marks on her or bruises or anything
25 like that?

1 A No sir, none other than the bruise she had on her
2 forehead.

3 Q Okay. She was acting fine?

4 A Yes, sir.

5 Q Sitting in her mother's lap?

6 A She could have been, yes.

7 Q Playing with her brother?

8 A Yes, sir.

9 Q Okay. And that was around 9:30 or 10:00 o'clock, I
10 think you testified to?

11 A Yes, sir.

12 Q So at that point in the evening, no problems with
13 Victim ?

14 A At that point no problems at all with her.

15 Q Now, I think it has been well established that these
16 children have their own bedroom, correct?

17 A Yes, sir.

18 Q They share a bedroom?

19 A Yes, sir.

20 Q And the children's bedroom is divided by this little
21 foyer here from their mother's bedroom, correct?

22 A That's correct.

23 Q With the bathroom there in the middle?

24 A Yes, sir.

25 Q When Ashley put the child, put Audrina back in the

1 bed that second time you walked back there with her,
2 didn't you?

3 A Yes sir, I may have.

4 Q Didn't you?

5 A I think I did.

6 Q And again at that point her putting her down
7 everything was fine?

8 A Yes, sir.

9 Q You didn't see, other than the bruise you described
10 earlier did you see any kind of other marks or injuries to
11 the child?

12 A No, sir.

13 Q Then you say in your statement that she then helped
14 Owen brush his teeth while there were laying down. I said
15 I was going to watch football, correct?

16 A Correct.

17 Q Okay. And that would have been when Ashley and Owen
18 went back into the bedroom and went to sleep, correct?

19 A Yes, sir.

20 Q And that is what you reported to everybody that
21 morning, Chaplain Brown, Dr. Curry, Ben Blackmon, Dee
22 Deal, that was what you told everybody that morning,
23 correct?

24 A Yes sir, that she went to bed.

25 Q That she went to bed, her and Owen went back in her

1 bedroom and went to bed?

2 A Yes, sir.

3 Q You watched the football game and then at some point,
4 you say I watched the game until 11:00 or so and went to
5 the bathroom and stuck my head in the door and Audrina
6 popped her head up?

7 A Yes, sir.

8 Q All right. Then you go on to say, I shut the door, I
9 didn't hold her then but I did earlier in the evening. I
10 didn't shake her or anything?

11 A Yes sir, that is the way the statement reads. I was
12 actually asked that question.

13 Q You were asked that question, which question?

14 A If I held her or if I had shaken her.

15 Q So you were asked the question if you had shaken her.
16 I mean you were asked the question if you had shook her?

17 A Yes, sir.

18 Q So you were watching the game and you had to go to
19 the bathroom, correct?

20 A Yes, sir.

21 Q So you left the living area and went around into the
22 kitchen, or the dining area and you went into the foyer
23 and that is when you decided you were going to check on
24 Victim?

25 A Yes, sir.

1 Q You opened the door to Victim room?

2 A Yes, sir.

3 Q So the door was shut?

4 A Yes sir, it was, she would always leave it cracked
5 open, Ashley would.

6 Q And so you pushed it open?

7 A Yes, sir.

8 Q You stuck your head in?

9 A Yes, sir.

10 Q And she woke up?

11 A Yes, sir. She popped her head up.

12 Q And looked at you?

13 A Yes, sir.

14 Q And you shut the door?

15 A Yes, sir.

16 Q When you checked on her at that time Ashley was in
17 the bed with Owen?

18 A Yes, sir.

19 Q She was not in the bedroom with Victim ?

20 A No sir, she was in her bedroom.

21 Q Victim wasn't crying at that time, was she?

22 A No, sir.

23 Q She wasn't being fussy?

24 A No, sir.

25 Q She wasn't doing anything to cause you to check on

1 her and to open the door?

2 A No, sir.

3 Q It is just your testimony that you just checked on
4 her?

5 A Yes, sir. I was right by her room so I stuck my head
6 in and checked on her.

7 Q Then you put in your statement, I didn't shake her or
8 anything?

9 A In reference to one of the officer's questions, yes.

10 Q You were anticipating my question, weren't you?

11 A I am sorry?

12 Q You were anticipating what I was going to ask you,
13 weren't you, when you said that. You said the officer
14 asked you that question?

15 A I was just answering the question.

16 Q You thought it important enough at that point that
17 you put that in your statement, didn't you?

18 A When they asked me, yes sir, they wrote the statement
19 for me, I didn't write it.

20 Q You thought that was important to say that I didn't
21 shake her?

22 A At the time, yes, I guess I did.

23 Q Then you go on in your statement and you say, I tried
24 to wake Ashley up and she was tired. Then I tried to give
25 her some food. Now, that was the, that was one time you

1 went in there with her, wasn't it, you asked her if she
2 wanted to come eat with you, I mean, if she wanted to come
3 and watch the movie and eat something with you?

4 A I think it was two separate times. I asked her
5 before I started the movie. And then whenever I was about
6 done watching the movie I asked her if she wanted
7 something to eat.

8 Q So, where does it say that in your statements, that
9 you went in there two separate times. Does it say that?

10 A I am not sure if it does.

11 Q Well, in this statement it says, I tried to wake
12 Ashley up and she was tired. And then I tried to give her
13 some hash but she didn't want it. So, I went back to the
14 living room and put in a movie. Does it say anything in
15 this first statement about you going back in there to
16 check on Ashley at that time or a second time?

17 A I don't think it does, no.

18 Q Okay. So, it says Ashley didn't want anything to eat,
19 so you got yourself something to eat and went back to
20 watch the movie, correct?

21 A Correct.

22 Q And what was the movie you were watching?

23 A It was a movie called Congo.

24 Q Okay. And you went back into the living area,
25 correct?

- 1 A Correct.
- 2 Q This is State's exhibit number 32. That is the room
- 3 you went back in to?
- 4 A Yes, sir.
- 5 Q That is a speaker right here, isn't it?
- 6 A Yes sir, it is.
- 7 Q And that is hooked up to the television?
- 8 A It is like a surround sound type thing.
- 9 Q It is a surround sound speaker, isn't it?
- 10 A Yes, sir.
- 11 Q And you were watching that television, that night?
- 12 A Yes, sir.
- 13 Q With the surround sound on it?
- 14 A Yes, sir.
- 15 Q And isn't it true that when EMS came in there that
- 16 morning to get that baby that was on so loud they had to
- 17 turn it down so they could talk?
- 18 A I am not sure if they had to do that or not. It may
- 19 have been.
- 20 Q It was on pretty loud, wasn't it?
- 21 A It is a Congo movie.
- 22 Q It is an action thriller, isn't it?
- 23 A Yes sir, it is kind of an action movie, almost horror
- 24 movie, I guess.
- 25 Q Now, when you first went into Victim room there

1 was a small night light on in that room, correct?

2 A Yes sir, there was always a night light on in the
3 room.

4 Q No overhead light on?

5 A No, sir.

6 Q No lamp on?

7 A No, sir.

8 Q She wasn't crying?

9 A No, sir.

10 Q I am still referring to your first statement, your
11 first voluntary statement. She wasn't crying?

12 A No, sir.

13 Q She wasn't fussy?

14 A No, sir.

15 Q She wasn't calling for her mama?

16 A No, sir.

17 Q You just thought you would go in there and check on
18 her?

19 A Yes, sir. I was right there by her so I stuck my
20 head in.

21 Q You then go on to say in this first statement, I
22 looked in on her about 1:20 and she didn't stick her head
23 up, correct?

24 A Correct.

25 Q So I thought she was asleep, you thought she was

1 asleep?

2 A Usually even if she were asleep she would pop her
3 head up, she was a very light sleeper.

4 Q I am not asking you that, Mr. Lewis, I am saying you
5 said you thought she was asleep?

6 A In this statement, yes.

7 Q And that was 1:20 in the morning?

8 A Correct.

9 Q And you go on to state, when I see her she was laying
10 on her stomach with her head on the rails on the crib?

11 A That is correct.

12 Q And at that point you thought she was asleep?

13 A At that point I thought something was wrong with her.

14 Q When you looked in on her the second time and saw her
15 you thought she was asleep, isn't that what you said?

16 A That is what it says in the statement, yes.

17 Q So you went in the room and tried to wake her up?

18 A Yes, sir.

19 Q All right. And there was a little night light on,
20 correct?

21 A Correct.

22 Q Ashley was in her room with Owen?

23 A Yes, sir.

24 Q You never made any statement in your first statement
25 about seeing or hearing Ashley come out of that room, did

1 you?

2 A No, sir.

3 Q So, you went into that room to a child you thought
4 was sleeping and you tried to wake her up?

5 A I saw a child that I thought was hurt, I tried to
6 help her.

7 Q You just stuck your head in the door, correct?

8 A At 11:00, yes.

9 Q She didn't, no, I am talking about at 1:20, you stuck
10 your head in the door?

11 A Yes, sir.

12 Q Or did you go in the room?

13 A After I saw the way she was laying in the crib I went
14 in the room.

15 Q And you still thought she was asleep but you said you
16 saw her laying horizontally?

17 A Yes sir, she was laying horizontally in the crib.

18 Q That is not in your statement either, is it?

19 A No sir, it is not in this statement.

20 Q It is not in your other statement either, is it?

21 A That she was laying horizontally, I don't think it
22 is.

23 Q So you go in there and you try to wake what you think
24 is a sleeping baby, you nudge her and you call her name,
25 didn't you?

1 A I called her name and when I saw how she was laying I
2 got her out of the crib.

3 Q You thought she had had a seizure?

4 A I thought it was possible that she had a seizure.

5 Q Okay. And you didn't say anything in here about
6 hearing any footsteps or let me, excuse me, you didn't say
7 anything in your first voluntary statement about hearing
8 any footsteps or anything like that?

9 A No, sir.

10 Q You didn't say anything about hearing a baby being
11 shaken?

12 A No, sir.

13 Q You go on to say in your statement, though, I thought
14 that she had a seizure?

15 A Yes, sir.

16 Q Trying to explain what you thought you saw?

17 A Yes, sir.

18 Q So you thought at that time that you would go into
19 the room of a sleeping baby who wasn't fussy, who wasn't
20 crying and you wake her up. You thought that was
21 important to do?

22 A From the way that she was laying in the crib, yes, I
23 thought it was important to check on her.

24 Q Now, what you put in this statement is basically the
25 same thing you told everybody else that morning, isn't it?

1 A Who do you mean.

2 Q I mean everybody that you talked to that morning
3 before that statement, it is basically the same thing you
4 told those other people?

5 A Yes, sir.

6 Q Chaplain Brown, Dr. Curry, law enforcement, Officer
7 Garrison, Dee Deal and law enforcement. That is what you
8 told all of those people, correct?

9 A Yes, sir.

10 Q You never mentioned anything to any of those people
11 about hearing any of these footsteps or these noises that
12 you describe five hours after that statement, did you?

13 A No, sir.

14 Q Then you came back and gave your second statement.
15 Let me show that to you, it is marked defendant's exhibit
16 for evidence number 2. Is that your statement?

17 A Yes sir, it is.

18 Q I am going to read the bottom of it for you. It says
19 I have read each page of this statement consisting of one
20 page, each page of which bears my signature and
21 corrections, if any, bear my initials and I certify that
22 the facts contained herein are true and correct. Is that
23 right?

24 A Yes sir, that is right.

25 Q So this second statement is a lot different than the

1 first statement, isn't it?

2 A Yes, sir.

3 Q So you were saying, based upon what I have read off
4 both of these statements you were saying both of these
5 statements are true and correct. Is that right?

6 A Yes, sir. I am not saying that the first one is
7 correct now.

8 Q No, you are not saying the first one is correct now,
9 are you. Because you had time to think about that that
10 morning, didn't you?

11 A The first one wasn't correct.

12 Q Between the first statement at 6:42 and this
13 statement here you had time to think about what you had
14 said all morning, didn't you?

15 A I had time to think but I also had time to use better
16 judgment.

17 Q And your better judgment was to protect yourself,
18 wasn't it?

19 A My better judgment was to tell the truth.

20 Q Your better judgment told you, I have told everybody
21 that associated with this case that I was the last person
22 in that baby's room. Isn't that what you told them?

23 A That is what I told everybody until I made this
24 statement, yes.

25 Q Right. Before that statement you told everybody that

1 my client, Ashley Hepburn, had gone to bed and she was in
2 the bed when you found that child and you didn't say
3 anything to anybody about hearing footsteps or the sounds
4 of a baby being shaken, did you?

5 A No, sir.

6 Q So you had time to think about it sitting there in
7 Laurens County Sheriffs Office. And you decided I better
8 protect myself in this case, didn't you?

9 A No, sir.

10 Q I better come up with a story to try to change what I
11 have told all of these other people, correct?

12 A No, sir.

13 Q But you certified both of them to be true?

14 A I did.

15 Q So you lied?

16 A Yes sir, I did.

17 Q So you are a liar?

18 A No sir, I am not.

19 Q All right. You certified both of these statements to
20 be true, correct?

21 A Correct.

22 Q So you are saying you lied?

23 A Yes, sir.

24 Q Mr. Lewis, you want us to believe that you lied when,
25 are you lying now?

1 A No, sir.

2 Q Or did you lie the morning of October 13th of 2009,
3 which one is it?

4 A I tried to protect her, I wasn't lying.

5 Q Okay. So you were trying to protect her, you weren't
6 lying. So you are saying that you lied to Chaplain Brown,
7 is that a lie?

8 A No sir, I don't recall everything that was said with
9 Chaplain Brown.

10 Q I am just trying to figure out how many times you
11 have lied, young man, that is what I am trying to figure
12 out here. You testified earlier when I was talking to you
13 that the sequence of events that Chaplain Brown testified
14 to, you told him that Ashley and Owen went to bed, that
15 you went in the room with the baby and found her, you took
16 the child to Ashley and you never said anything about
17 getting up. Was that a lie?

18 A No sir, it wasn't a lie. I just didn't tell them
19 everything.

20 Q You didn't tell the truth, is that what you are
21 wanting to say?

22 A Yes, sir.

23 Q So not only are you a liar, you don't tell the truth
24 either, is that what you are telling me?

25 A No, sir.

1 Q I asked you a while ago, you didn't tell the truth,
2 correct?

3 A The first statement was not true.

4 Q The first statement was not true. I am talking about
5 what you told these other folks because it sure sounded a
6 lot like what you put in this voluntary statement, what
7 you told everybody else before you did this first
8 statement at 6:42 a.m., it sure sounded a lot like that.
9 I am trying to figure out, you are saying this one is a
10 lie, correct?

11 A Correct.

12 Q This statement that you gave at 6:42 a.m., you are
13 saying that was a lie?

14 A Yes, sir.

15 Q So you have admitted that you are a liar. So is
16 everything you told Chaplain Brown, Dr. Curry, Dee Deal,
17 Officer Garrison and law enforcement over at the hospital,
18 did you lie to all of them too?

19 A Yes, sir.

20 Q Okay. So that is six lies all together you are
21 saying you told that morning. So you want us to believe
22 you now though, you are telling the truth now, is that it?

23 A Yes, sir.

24 Q Okay. It didn't have anything to do with the fact
25 that you realized between 6:42 a.m. and that second

1 statement that you could go to jail for the rest of your
2 life, you realized that, didn't you?

3 A No, sir.

4 Q You realized that you had told everybody that morning
5 you were the last person in that room with that child and
6 you found her in that condition and took her to her mother
7 across the hall, that is what you realized, isn't it?

8 A No, sir.

9 Q You didn't realize that, you didn't think about that?

10 A I didn't do anything wrong, why would that occur to
11 me.

12 Q So you want us to believe you lied and then you
13 decided to do the honorable thing?

14 A Yes, sir.

15 Q You decided to do the honorable thing after you
16 realized what you had said?

17 A Yes, sir.

18 Q And what you had said was that you were the only one
19 up, Ashley was in the bed with Owen, when you found the
20 child you took her to Ashley who was still in the bed with
21 Owen, that is what you had said?

22 A Yes, sir.

23 Q And you say that you and Ashley got into an argument
24 that evening?

25 A Yes, sir.

1 Q And you got upset, right?

2 A Yes, sir.

3 Q You got upset?

4 A Yes sir, we were both upset.

5 Q This thing about we started watching TV, I am
6 referring to your second statement, we started watching TV
7 and ended up getting into an argument over me telling her
8 how to be a better parent. You told her she needed to be
9 a better parent?

10 A Something to that nature, yes.

11 Q It is your statement, Mr. Lewis, I am reading out,
12 this is what you signed, correct?

13 A Yes, sir.

14 Q So you told her she needed to be a better parent?

15 A Yes, sir.

16 Q Okay. Do you know how to be a better parent than
17 her?

18 A Yes sir, I do.

19 Q Okay. And do you have children?

20 A No sir, I don't.

21 Q And you say Ashley got mad because I told her her son
22 got away with everything that he does and then you went to
23 lay down on her bed. So y'all got into an argument about
24 parenting, correct?

25 A Correct.

1 Q And none of that is in your first statement, is it?

2 A No, sir.

3 Q And this second statement that you gave is about five
4 and a half hours after your first statement?

5 A Yes, sir.

6 Q And you had been at the annex building for that
7 entire time?

8 A Yes, sir.

9 Q Never left?

10 A Never left.

11 Q And about, for ninety percent of that time you were
12 being interrogated?

13 A Yes, sir.

14 Q You had a little bit of time, I think you said, to
15 talk to your grandmother?

16 A Very briefly amount of time, yes sir.

17 Q And you say in this second statement that Owen got an
18 intense spanking?

19 A Yes, sir.

20 Q Not in your first statement?

21 A No, sir.

22 Q Nothing like that is in your first statement?

23 A No sir, it is not.

24 Q You didn't see a spanking that night, did you?

25 A Yes, I didn't see a spanking, no I didn't.

1 Q You didn't witness it, you weren't in there with
2 them?

3 A No, sir.

4 Q You were in the bedroom?

5 A Yes, sir.

6 Q They were in the bathroom?

7 A Yes, sir.

8 Q And this thing about jerking, you said something
9 about Ashley jerking Owen up by the arm, that is not in
10 either statement, is it. Take your time and read over it,
11 you won't find it.

12 A No sir, it isn't.

13 Q It is not, in either one of those statements, is it,
14 about her jerking her child up by the arm?

15 A No, sir.

16 Q Is that something new you want to tell us about or is
17 that a lie too?

18 A That is not a lie.

19 Q Okay. All right. Are you sure?

20 A I am absolutely sure.

21 Q So you are building on the story as we go along, is
22 that what you are telling me?

23 A No, sir.

24 Q You now come back sixteen months later and, sixteen
25 months after these statements and you are wanting to give

1 us some new information, aren't you?

2 A No, sir.

3 Q So, when they were in the bathroom you were in
4 Ashley's bedroom, correct?

5 A That is correct.

6 Q And after Owen brushed his teeth that night he and
7 Ashley went to bed?

8 A Yes, sir.

9 Q **Victim** was already in her crib?

10 A Yes, sir.

11 Q Did you ever go back in there and see Ashley reading
12 these books to Owen?

13 A No, sir.

14 Q You were in their watching football?

15 A Yes, sir.

16 Q And according to your second statement you went to
17 check on **Victim** around 11:00 o'clock a.m.

18 A That is correct.

19 Q And you checked on her then, you were going to the
20 bathroom?

21 A Yes, sir.

22 Q And she was fine?

23 A She was fine.

24 Q Then around 12:00, it says, I started watching TV
25 again and then around 12:45 in the a.m. I heard **Victim**

1 crying in her room. So you heard her crying?

2 A Yes, sir.

3 Q Okay, you heard her crying but you had, was the
4 football on or was that movie in at that time?

5 A The movie was in.

6 Q So you got this action, thriller, horror movie on the
7 surround sound and you hear Victim crying?

8 A I could faintly hear her crying, yes.

9 Q You were in the den?

10 A Yes, sir.

11 Q You were laying on the couch?

12 A Yes, sir.

13 Q I think you have already told us where you were but
14 in State's exhibit number 32 you were somewhere on here on
15 the couch?

16 A Yes, sir.

17 Q Were you awake or were you asleep?

18 A I was awake.

19 Q Now, when I spoke to you last about this didn't you
20 say you had dozed off?

21 A I had almost drifted off to sleep, yes.

22 Q Didn't you say you had dozed off?

23 A Yes, sir.

24 Q So you didn't say that now, right?

25 A I wasn't asleep, whenever I heard the footsteps I was.

1 alarmed, I could feel the vibrations and I never quite
2 dozed off to sleep.

3 Q Now, you went to check on [Victim] the first time at
4 11:00 and you were going to the bathroom, she wasn't
5 crying, she wasn't fussy?

6 A No, sir.

7 Q But you checked on her?

8 A Yes, sir.

9 Q When did you check on her when you heard her crying
10 on this second statement?

11 A It was around 1:20 a.m.

12 Q Now, you say I started watching TV then around 12:45
13 in the a.m., I heard [Victim] crying in her room. You
14 didn't go check on her, did you?

15 A No, sir.

16 Q So, you check on a baby that is not crying but a baby
17 that is crying you don't go check on her?

18 A I heard her mother go into the room, there was no
19 need for me to check on her.

20 Q Okay. Now, that is when you say I then heard some
21 loud footsteps coming from the back of the house where
22 Ashley and Owen were located at. [Victim] then started
23 crying even louder as if being shaken, correct?

24 A Correct.

25 Q So, you heard what you thought was a baby being

1 shaken?

2 A Yes, sir.

3 Q At 12:45, correct?

4 A Yes, sir.

5 Q And you heard her crying louder like she was being
6 shaken?

7 A Yes, sir.

8 Q And you didn't go check on her then either, did you?

9 A Not at that point and time, it only occurred to me
10 that she had actually been shaken when law enforcement
11 told me it was shaken baby syndrome.

12 Q All right. So, that was a sound that you had heard
13 before?

14 A No, sir.

15 Q You didn't hear any kind of bang or any kind of thud
16 or anything like that, did you?

17 A No, sir.

18 Q But you get up and you take the time to go check on a
19 baby that is not crying or fussy. But when you hear what
20 you say you describe as a baby being shaken you didn't
21 bother to get up and go around there and check on her, did
22 you?

23 A No sir, I didn't check on her at that instance, no I
24 didn't.

25 Q You are saying that you waited ten or fifteen minutes

1 before you did anything?

2 A Yes, sir.

3 Q What is the sound of a baby being shaken sound like?

4 A It would be hard for me to do it myself, I just
5 remember hearing breaks in her voice and pauses and it
6 just sounds different than the way she would normally cry.

7 Q So your testimony is that you heard what you
8 described as a baby being shaken but you can't tell us
9 what it sounds like?

10 A I can't personally tell you what it sounded like, I
11 can describe to you what it sounds like, I can't make the
12 noise myself.

13 Q When you heard this you didn't bother to go in there
14 and say, what is going on here, why is this baby making
15 this sound I never heard before, did you?

16 A No, sir.

17 Q That is because it didn't happen that way, did it?

18 A It happened.

19 Q You waited fifteen minutes to get up from where you,
20 you are wanting us to believe you waited fifteen minutes
21 after you say you heard what you heard to even get up off
22 that couch?

23 A No sir, I went and checked on Ashley first and then I
24 asked her if she wanted anything to eat. I ate and then I
25 found Victim the way she was.

1 Q I am saying, what I am saying though, listen to me,
2 Mr. Lewis, is after you say you heard what you say you
3 heard but you can't describe for us you waited fifteen
4 minutes to get up from the couch, didn't you?

5 A Yes, sir.

6 Q And when you waited those fifteen minutes, you saying
7 you heard what you heard and you say you heard it in that
8 baby's room right there, correct?

9 A Her crib is actually on the other side.

10 Q Okay. I am saying this room?

11 A Yes sir, that room.

12 Q Okay. And when you got up off the couch after you
13 said you heard what you heard, allegedly, you got up off
14 the couch in this room, you walked around to this foyer?

15 A Yes, sir.

16 Q You could probably hold your arms out like that and
17 touch both of those doors, couldn't you?

18 A Yes, sir.

19 Q And instead of turning left to go check on a baby
20 that you described allegedly hearing the sounds of the
21 mother go in there, stomp in there, shake her daughter and
22 them stomp out, that is what you say happened, right?

23 A Yes, sir.

24 Q And instead of turning left to go in that room to
25 check on that sixteen month old baby you say you turned

1 right to check on your girlfriend?

2 A Yes, sir.

3 Q The door to Ashley's room was closed?

4 A No, sir.

5 Q The door to Victim room was closed?

6 A Yes, sir.

7 Q Your statements don't say anything about hearing the
8 baby's door open or anything like that, do they?

9 A No, sir.

10 Q When you made that turn to the right, not going left
11 to check on a sixteen month old that you say allegedly you
12 heard what you heard and you made that turn to the right
13 at that time you went in there and asked her if she wanted
14 to come watch a movie and eat some hash that our
15 grandmother made?

16 A Yes, sir.

17 Q Owen is still in the bed with her?

18 A Yes, sir.

19 Q She is laying in her bed, Ashley is laying in the
20 bed?

21 A Correct.

22 Q She is asleep?

23 A Yes sir, to my knowledge she was asleep.

24 Q She was in there with the door, I mean with the
25 lights out?

1 A Correct.

2 Q You say you woke her up, correct?

3 A Yes sir, I woke her up.

4 Q So she was asleep?

5 A Yes, sir.

6 Q And she said, no, I don't want anything to eat, I
7 don't want to come watch the movie with you. So you leave
8 this bedroom, you leave this bedroom and you walk back
9 into this foyer, correct?

10 A Correct.

11 Q And instead of going straight across to investigate
12 what you say you allegedly heard over the surround sound
13 in that den, in that living area, over the Congo movie,
14 the thriller action movie, what you say you heard, instead
15 of going straight across to investigate to check on this
16 baby you turn left and go in the kitchen and get yourself
17 a plate of hash, didn't you?

18 A Yes, sir.

19 Q Then you leave that kitchen, you go again back into
20 the den and sit down and eat your food and watch a movie?

21 A Yes, sir.

22 Q And you are saying you did all this after what you
23 described for us as the sound of a baby being shaken?

24 A Yes, sir.

25 Q Mr. Lewis, that is pretty unbelievable, isn't it?

1 A At the time I didn't fully understand the severity of
2 the situation and was later explained that it was possible
3 shaken baby syndrome.

4 Q You never went in there to investigate, you never
5 thought of the urgency to go in there with what you are
6 telling us was true, you never went in there to check on
7 that baby?

8 A No, sir. I never thought that her mother would do
9 that to her.

10 Q And you never thought that her mother would do that
11 to her because her mother didn't do it, you did it, didn't
12 you?

13 A No, sir.

14 Q You went in that night while Ashley was in the bed
15 asleep with Owen and you caused these injuries to Victim
16 didn't you?

17 A No, sir.

18 Q That is why you have that second statement, you
19 decided you had to cover yourself, didn't you?

20 A No, sir.

21 Q Ashley was in there sleeping with Owen and you went
22 in there because you were upset, you were still upset and
23 you hurt that baby, didn't you?

24 A I could never get that upset, no sir.

25 Q And that doesn't match up with anything that you told

1 all of these people all morning long about what happened,
2 does it?

3 A No sir, it doesn't.

4 Q You admitted being a liar and now you are telling us
5 you couldn't get that upset to hurt that baby?

6 A No sir, I could not.

7 Q So should we believe you now?

8 A Yes, sir.

9 Q We should believe what you say now is true?

10 A Yes, sir.

11 Q Because you are afraid of going to jail, aren't you?

12 A I don't want to go to jail more than anyone would but
13 I want you to believe me because it is the truth.

14 Q But you didn't bother to tell anybody that until
15 about 12:00 o'clock that afternoon, did you?

16 A No, sir.

17 Q You told them something completely different?

18 A Yes, sir.

19 Q You signed the paper saying that what you told all of
20 those people at the hospital and signed a paper saying
21 that is true, that is, I certify that to be true and
22 correct?

23 A Yes, sir.

24 Q You never saw Owen out of bed that night?

25 A No, sir.

1 Q Have you ever used cocaine?

2 MR. WISE: Objection.

3 THE COURT: Mr. Able, relevance?

4 MR. ABLE: Sorry, Your Honor.

5 THE COURT: Ladies and gentlemen of the jury, that
6 last question was improper. You are instructed to
7 disregard that, there will be no inference drawn on that
8 whatsoever from that question in any way shape or form.
9 It was an improper question and should not have been
10 asked. Continue, Mr. Able.

11 MR. ABLE: Sorry, Your Honor.

12 Q When you finished eating you threw your plate in the
13 trash and that is when you decided you would go check on
14 Victim ?

15 A Yes, sir.

16 Q You say in the second statement you saw her laying
17 face down and she was hardly breathing?

18 A Yes, sir.

19 Q And you just popped your head in like before?

20 A Yes sir, pretty much, the way that I did before.

21 Q And you just pushed the door open and stuck your head
22 in?

23 A Yes, sir.

24 Q There is no light night?

25 A There is a night light.

1 Q I am sorry, there was a night light, there wasn't any
2 bedside lamp or over light on or anything like that?

3 A No, sir.

4 Q So you popped your head in and let me show you what
5 has been marked as State's exhibit number 62. That is
6 Victim crib looking from the door, correct?

7 A Correct.

8 Q And you popped your head in like you did the first
9 time, just pushed the door open?

10 A Yes, sir.

11 Q And with that low night light, you looked in to check
12 on the child?

13 A Yes, sir.

14 Q And you say you saw her laying horizontal in that
15 crib from that point?

16 A Yes, sir.

17 Q And the low light?

18 A Yes, sir.

19 Q And again, the part about saying she was laying
20 horizontal in her crib, you didn't put that in either one
21 of your statements, did you?

22 A No, sir.

23 Q She wasn't being fussy then?

24 A No, sir.

25 Q She wasn't crying?

1 A No, sir.

2 Q So then again you go in and check on a baby who isn't
3 being fussy and isn't crying, you check on her then but
4 you wouldn't check on her when she was crying?

5 A No sir, because her mother was in the room with her.

6 Q And you didn't go check on her when you say you heard
7 what you heard?

8 A No sir, not until about ten minutes later.

9 Q So you go in that room to a baby you thought was
10 asleep, not crying, not being fussy and you try to wake
11 her up?

12 A I got her out of the crib, I didn't try to wake her
13 up.

14 Q She wasn't making any noise like she wanted to be
15 taken out of the crib or anything, was she?

16 A No sir, she wasn't making any noises at all.

17 Q So, after you say you saw her laying horizontally
18 which you didn't put in your statement that you say caused
19 you to go in there to check on her, that is when you say
20 you saw her and you picked her up?

21 A Yes, sir.

22 Q Mr. Lewis, you knew something was wrong with that
23 baby because you went in there that night, didn't you?

24 A No, sir.

25 Q You were the only one up at that time, weren't you?

1 A No sir, I know that she went into the room so I
2 wasn't the only one awake.

3 Q You were the only one, you told everyone previously,
4 prior to this last statement that you gave that you were
5 the only one out of bed that night, correct?

6 A Correct.

7 Q And you told everyone Ashley was still in the bed
8 across the hall?

9 A Correct.

10 Q Now, in your second statement you make a statement
11 about the baby was, Victim was laying in her crib face
12 down and was hardly breathing. So, you determined she was
13 hardly breathing while she was laying in her crib face
14 down?

15 A No sir, I determined she was hardly breathing when I
16 got her out of the crib.

17 Q I am sorry?

18 A When I got her out of the crib I noticed that she was
19 barely breathing.

20 Q Now, you don't say anything in here about picking her
21 up before noticing that, did you?

22 A No, sir.

23 Q But you said she, Victim was laying in her crib face
24 down and was hardly breathing. So, you say now that you
25 went in there and picked her up and noticed that she was

1 hardly breathing?

2 A Correct.

3 Q So before you picked her up you didn't know she was
4 hardly breathing?

5 A That's correct.

6 Q And when you went in to wake up Ashley after this
7 discovery you say she became frantic, didn't she?

8 A Not at first she didn't.

9 Q Is that the part you are saying about she went to use
10 the bathroom?

11 A That's correct.

12 Q And that is the part where you are adding today about
13 she went to the bathroom and you say, look, something is
14 wrong with the child?

15 A Yes sir, that is what I did.

16 Q And that is a new part to the story too, correct. Is
17 that in either one of these statements?

18 A No, sir.

19 Q That is a new part you are telling us about, correct?

20 A Yes, sir.

21 Q Ashley took that baby from you and held her and she
22 started screaming her name, didn't she?

23 A Yes, sir.

24 Q She was frantic?

25 A Yes, sir.

1 Q Panicking?

2 A Yes, sir.

3 Q She wanted to know what was wrong with her child?

4 A I assume she did but I think she should have known.

5 Q I am sorry?

6 A I think she was aware of what happened to her.

7 Q You think she was aware that you went in there and
8 beat that child to death?

9 A No sir, not at all.

10 Q Ashley was crying?

11 A Yes, sir.

12 Q And you went into her room holding her lifeless baby
13 and she was asleep in that room, correct?

14 A Correct.

15 Q After you had gone in there to check on her earlier
16 to ask her if she wanted some food and to watch a movie
17 after you had allegedly saying she went in there and hurt
18 her daughter, correct?

19 A Correct.

20 Q So, you appear in the doorway of her bedroom holding
21 her lifeless baby and she becomes frantic and upset just
22 like you would expect a mother to, don't you?

23 A After she went to the bathroom she became frantic
24 like I would have expected her to.

25 Q Where is the part about going to the bathroom in the

1 first statement?

2 A It is not in there.

3 Q You were the last one to be in that room with Victim
4 that night, weren't you?

5 A Yes, sir.

6 Q You were the last one to hold Audrina in that room
7 that night, weren't you?

8 A Yes, sir.

9 Q You never saw Ashley hurt Victim in any way that
10 night, did you?

11 A No, sir.

12 Q You never saw Ashley shake that baby that night, did
13 you?

14 A No, sir.

15 Q You never saw Ashley get out of bed that night, did
16 you?

17 A No, sir.

18 Q And after you say you heard what you heard allegedly
19 you never went to check on that baby until you decided you
20 were going to bed, correct?

21 A Correct.

22 Q So you have given a lot of different stories in this
23 case, haven't you?

24 A No sir, I don't think that I have.

25 Q You have talked to a lot of different people about

1 it, I am talking about the morning of October 13th of
2 2009, you talked to a lot of different people, didn't you?

3 A Yes, sir.

4 Q And you gave one concise specific story up until that
5 last sworn statement, didn't you?

6 A Yes, sir.

7 Q For everybody else that morning you reported the same
8 thing, correct?

9 A Correct.

10 Q You heard Ashley's testimony, correct?

11 A Correct.

12 Q And you heard Captain Brown's testimony, correct?

13 A Correct.

14 Q And you heard Dr. Curry's testimony, correct?

15 A Yes, sir.

16 Q And you heard Officer Garrison's testimony, correct?

17 A Yes, sir.

18 Q You heard Dee Deal's testimony, correct?

19 A Yes, sir.

20 Q And you heard the testimony of Dr. Crosswell in
21 Greenville, correct?

22 A Yes, sir.

23 Q And Ashley gave the same story each time to everybody
24 that she was asleep in the bed from the time she and Owen
25 laid down until you came in there with **Victim**, correct?

1 A Yes, sir.

2 Q So the only one who has changed their story is you?

3 A Yes, sir.

4 Q And when Ashley, you never went to Greenville
5 Hospital, did you?

6 A No, sir.

7 Q You were down here giving this first statement?

8 A Yes, sir.

9 Q The one at 6:42 a.m.

10 A Yes, sir.

11 Q And you heard Dr. Crosswell last week testify that
12 she had obtained a history from Ashley that morning up in
13 Greenville, correct?

14 A Correct.

15 Q And Ashley was telling Dr. Crosswell, from her
16 testimony last week that she had gone to bed with Owen and
17 that you come in there to ask her if she wanted something
18 to eat, that you were the only one up and the next thing
19 she knew you were standing over her with the body of her
20 lifeless baby, correct?

21 A Correct.

22 Q That was Dr. Crosswell's testimony?

23 A Correct.

24 Q That is what Dr. Crosswell testified that Ashley told
25 her the morning of October 13th while you were down here

1 giving your sworn statement?

2 A Yes, sir.

3 Q And isn't it funny that when Ashley was telling Dr.
4 Crosswell was the same exact thing you were telling
5 Officer Ben Blackmon, it was the same story, wasn't it?

6 A Yes, sir.

7 Q I am sorry?

8 A Yes sir, that was the first statement, yes sir.

9 Q So what she is up there telling Dr. Fran Crosswell
10 you are down here at the same time telling Officer Ben
11 Blackmon at the sheriffs office, correct?

12 A To the best of my knowledge, yes.

13 Q It was the same thing, it was the same history of
14 events that she was relating to a doctor thirty miles away
15 while you were relating that same information to Ben
16 Blackmon here at the sheriffs office?

17 A Yes, sir.

18 Q And then five and a half hours later, after you had
19 realized you had put yourself in that baby's room by
20 yourself, the last one in there, what you had told
21 everybody else that morning that Ashley was asleep,
22 nothing about any of these footsteps, nothing about
23 hearing the sounds of a baby. That is when you came back
24 and made up this story, isn't it?

25 A No sir, I didn't make that story up.

1 Q Well, you say you made this one up?

2 A I didn't give the complete truth, no.

3 Q Okay. So, this complete truth and what she was
4 telling Dr. Crosswell, that is not the truth. How was she
5 up there telling the same thing, when you are down here
6 telling it to Ben Blackmon?

7 A I am not sure.

8 Q That is all I have of this witness.

9 THE COURT: Mr. Wise, redirect?

10 MR. WISE: Yes, sir.

11 REDIRECT EXAMINATION

12 By Mr. Wise:

13 Q Did Ashley Hepburn ever give a written statement to
14 the police officers that you know of?

15 A Not that I know of.

16 Q Did she ever sit in a three hour deposition?

17 A No, sir.

18 Q Did she ever testify in the DSS hearing?

19 A No, sir.

20 Q What was Ashley's normal habit to do with the bottle
21 that she gave Victim at night?

22 A I am not exactly sure.

23 Q Let me ask you this question. When Victim went to
24 bed what did Ashley do with the bottle?

25 A She would put it in her crib.

1 Q Put it in her crib. Did you ever see her put Victim
2 to bed without putting the bottle in the crib?

3 A No, sir.

4 Q Now, after this happened they mentioned attempted
5 suicide?

6 A Yes, sir.

7 Q Were you upset over, what were you upset about?

8 A I loved Ashley and I didn't want to have to testify
9 against her, I didn't want to have to do any of this.

10 Q Did that bother you?

11 A Yes, sir.

12 Q After you went to a psychiatrist did it help you?

13 A Yes, sir.

14 Q Did it help you deal with the issues?

15 A Yes, sir.

16 Q In fact after you went to a psychiatrist did you go
17 to school?

18 A Yes, sir.

19 Q And after you went to the psychiatrist and had the
20 psychotherapy how did your grades do?

21 A They were fine.

22 Q In fact after you went to the psychiatrist did you
23 receive any awards?

24 A For my ACT I received an award for meeting, above
25 credible thinking on the ACT.

1 Q Did you get an award for that?

2 A I got a certificate and a gift certificate.

3 Q So the psychologist and psychiatrist you saw helped
4 you?

5 A Yes, sir.

6 Q You then put in your second statement about Ashley
7 jerking [Victim], didn't you?

8 A Do you mean Owen.

9 Q I mean, excuse me, Owen?

10 A No, sir.

11 Q You gave a deposition on March 4th of 2010?

12 A Yes, sir.

13 Q I ask you to look at page 63, line 18 and read what
14 you said in March of 2010?

15 A No sir, I know she spanked, I mean she jerked him up
16 by the arm, took him in the bathroom and you know what a
17 spanking sounds like and he was crying.

18 Q So you told Mr. Able in March of 2010 she jerked him
19 up by the arm, didn't she?

20 A Yes, sir.

21 Q How long did you talk with the police officers the
22 night of the 13th of October?

23 A Probably about six hours.

24 Q Did they ask you as many questions as you have been
25 asked by Mr. Able?

1 A No, sir.

2 Q Did they ask you as detailed questions as asked by
3 Mr. Able?

4 A No, sir.

5 Q Did they ask you as detailed of questions as I have
6 asked you?

7 A No, sir.

8 Q Thank you.

9 THE COURT: Ms. Mayes.

10 MS. MAYES: Yes sir, Your Honor.

11 RECROSS-EXAMINATION

12 By Ms. Mayes:

13 Q Mr. Lewis, can we agree now that you did in fact
14 speak with Dr. Curry, that would be Dr. Michelle Curry,
15 the emergency room physician who was treating Audrina?

16 A Yes, ma'am.

17 Q So you do recall Dr. Curry coming into the family
18 room where both you and Ashley were together, correct?

19 A I don't recall that but I heard testimony dictates
20 and I have no reason to question whether she is telling
21 the truth or not.

22 Q All right. And if her report indicates that she
23 entered the family room and spoke with all family members
24 present including the child's mother and her boyfriend you
25 don't dispute that, correct?

1 A Correct.

2 Q And at that point both of you indicated to Dr. Curry
3 that she had been healthy, correct?

4 A Correct.

5 Q And Mr. Wise, I believe or Mr. Able was asking you
6 about Ashley's statement at Greenville Hospital. You
7 weren't present at Greenville Hospital, correct?

8 A Correct.

9 Q So you don't know what Ashley was saying to any of
10 the medical personnel, correct?

11 A No, ma'am.

12 Q Like Dr. Crosswell?

13 A No, ma'am.

14 Q But what you do know is that when the two of you met
15 with the Chaplain in Greenwood at Self Hospital one of the
16 first things that happened that night the two of you were
17 together, correct?

18 A Correct.

19 Q And at that point and time when the Chaplain came
20 into the family room and spoke with both you and Ashley
21 and her parents or her mom and Mr. Crumley were there you
22 were providing the information that is in the first
23 statement, the written statement that I believe we have
24 all acknowledged now is not the whole truth, correct?

25 A Correct.

1 Q And so right there in front of Ashley you were giving
2 the history that she was asleep and you were watching TV
3 and then at some point later you went in and checked on
4 the baby and she was unresponsive, correct?

5 A Correct.

6 Q And as you were giving that history Ms. Hepburn was
7 nodding along and in agreement with that story, correct?

8 A Correct.

9 Q So, it is fair to say at that point and time neither
10 one of you had any more information that you were willing
11 to provide to medical personnel, correct?

12 A Correct.

13 Q And in the second statement where you talk about the
14 fact that it sounded like she was being shaken, I believe
15 your testimony on cross-examination by Mr. Able was you
16 didn't tell them what you were hearing, it sounded as if
17 she was being shaken, correct?

18 A Correct.

19 Q And after you heard that sound you never heard
20 Audrina again, did you?

21 A No, ma'am.

22 Q And I think we can all agree that that would have
23 been important information for the medical personnel to
24 know, correct?

25 A Correct.

1 Q Now, Mr. Able was asking you about the sound of the
2 movie, Congo, was that movie so loud that it was keeping
3 up all the other members of the home?

4 A No, ma'am.

5 Q Was it loud enough to wake Mr. Crumley and Ms. Davis?

6 A No, ma'am.

7 Q Who are right here in this bedroom over here?

8 A No, ma'am.

9 Q And was it loud enough to wake up Owen?

10 A No, ma'am.

11 Q And would it have been loud enough to keep Victim
12 from sleeping?

13 A No, ma'am.

14 Q And in fact when y'all called 911 you called from
15 that living room area, correct?

16 A Correct.

17 Q Now, when, you testified previously about it being
18 approximately ten to fifteen minutes between when you hear
19 the sound of the stomping and Victim voice breaking and
20 then it sounded as if she was being shaken and you never
21 heard from her again. I believe your testimony a few
22 moments ago or earlier was that that was approximately ten
23 to fifteen minutes before you checked on her, correct?

24 A Correct.

25 Q But in this written statement you indicated that it

1 was around 12:45 in the morning I heard Victim crying in
2 her room. I then heard some loud footsteps coming from
3 the back of the house where Ashley and Owen were located
4 at. Victim then started crying even louder as if she was
5 being shaken. Then you later go into Ashley's room and
6 then there has been testimony that you went back to the
7 living room but ultimately I think we can agree that
8 according to when EMS arrived at the home, EMS arrived at
9 the home sometime after 1:20 a.m., correct?

10 A Correct.

11 Q So if your estimation of 12:45 in the morning is
12 accurate that would be in excess of thirty minutes, that
13 would be about thirty-five minutes.

14 MR. WISE: Your Honor, I am going to object to that,
15 that is a misleading question because if that is when EMS
16 arrived.

17 THE COURT: I will sustain, he can get what you are
18 getting at by rephrasing it.

19 MS. MAYES: Yes sir, Your Honor.

20 Q EMS, I believe, after everyone's estimate took around
21 ten minutes?

22 A Yes, ma'am.

23 Q Okay. Nothing further.

24 MR. WISE: Nothing further.

25 THE COURT: Mr. Lewis, thank you, you can step down.

1 I want to meet with counsel over here.

2 (Whereupon, a bench conference was held in the
3 presence of the jury but out of the hearing of the
4 jury.)

5 THE COURT: Ladies and gentlemen of the jury, it has
6 been a long day, we are going to break for the evening.
7 Please be back in the jury room tomorrow morning at 9:00
8 o'clock. Again, don't discuss the case with anyone
9 tonight. You will have this case to deliberate on
10 tomorrow at some point, hopefully in the late morning,
11 early afternoon. Don't discuss the case tonight with
12 anyone. You are excused.

13 (Whereupon, the jury excused from open court for the
14 day.)

15 THE COURT: The jury is out. We will be at ease in
16 this case until tomorrow at 9:00 o'clock.

17 (Whereupon, the trial will resume the next morning at
18 9:00 o'clock.)

19 THE COURT: The record should reflect that I
20 received, last evening, proposed charges and I previously
21 emailed and I meant to mention this to y'all yesterday.
22 But I emailed to you my proposed charges in hopes that you
23 would have an opportunity to look at them last night. I
24 don't know that you necessarily did. Apparently Mr. Wise
25 was able to take a look at them. He has submitted by

1 email two requests to charge on behalf of Mr. Lewis which
2 I will review here shortly because I couldn't open the
3 attachments.

4 MR. WISE: The oldest attorney in this trial can open
5 all of that.

6 THE COURT: I congratulate you, sir. So, I will
7 review those requests to charge, we won't discuss them at
8 this point and time but apparently Mr. Wise has submitted
9 three requests to charge. Y'all have copies for anything
10 that you would like for me to be looking at I will be more
11 than happy to take a look at that at this time. Ms.
12 Mayes, do you have anything specific?

13 MS. MAYES: No further request for charge, Your
14 Honor. I do have an objection to two of Mr. Wise's
15 charges.

16 THE COURT: We will take those up at a later point
17 and time when we give the jury a break.

18 MR. WISE: Your Honor, you have a curative
19 instruction yesterday when Mr. Able asked about the
20 cocaine.

21 THE COURT: Your first witness will also, yes, the
22 cocaine.

23 MR. WISE: On the basis of that question I also move
24 for a mistrial, for a curative instruction to erase that
25 from the jury's mind.

1 THE COURT: I am not entirely sure that the motion is
2 timely but I will take that under advisement. My usual
3 reaction is is that the curative instruction was
4 sufficient to hear the resulting prejudice. I think that
5 the speed in which I also gave the curative instruction
6 clearly conveyed to the jury that I had ruled that the
7 question was improper so I believe that the prejudice
8 which may have resulted in any prejudice, which may have
9 resulted to Mr. Lewis was cured by that curative
10 instruction. That is my initial reaction, do you want to
11 argue that again at a later point and time you will be at
12 liberty to do so. Let's have the jury.

13 (Whereupon, the jury came into open court at
14 approximately 9:15 a.m.)

15 THE COURT: Let the record reflect that the jury is
16 present. Ladies and gentlemen, I hope you had a restful
17 pleasant evening last night. We are still in Mr. Lewis'
18 case-in-chief. Mr. Wise, you may call your next witness,
19 sir.

20 MR. WISE: Call Ms. Starnes.

21 Carol Starnes, being first duly sworn, testified
22 as follows:

23 DIRECT EXAMINATION

24 By Mr. Wise:

25 Q Please give us your full name.

1 A Carol Starnes.

2 Q And, Ms. Starnes, where do you live?

3 A Cedar Street, Clinton.

4 Q And how long have you been living there?

5 A 42 years.

6 Q You are kin to Brandon Lewis?

7 A I do.

8 Q And what relation are you to him?

9 A I am his grandmother.

10 Q Did you receive a phone call from him in the early
11 morning hours of October 13th of 2009?

12 A I did, at 5:15 from Self Memorial Hospital.

13 Q All right. Basically without going into great detail
14 what did you learn from that conversation?

15 A He told me that he was at Self Memorial Hospital,
16 that Ashley's baby had gotten something wrong with it,
17 they didn't know what was wrong with it and I said I will
18 be there in a few minutes.

19 Q Did you go to Self Hospital?

20 A I did.

21 Q Did you see him there?

22 A No, they told me at the emergency room that he was
23 transported back to Laurens with some officers.

24 Q Okay. Did you subsequently get a phone call from a
25 Laurens Deputy?

1 A I did.

2 Q And who was that?

3 A Stephon Williams.

4 Q As a result of that phone call what did you do?

5 A I came to the sheriffs department, I think that is
6 the annex building and over there they was interrogating
7 Brandon.

8 Q Did you see Brandon?

9 A I did.

10 Q And who was in the room with you, if you remember?

11 A Nobody, they let me go in and see him but there was
12 four or five officers in there that talked to me before I
13 went in.

14 Q Did you speak to Brandon?

15 A I did.

16 Q What was his demeanor?

17 A Brandon, he was crying so and so sweaty I was afraid
18 he was going into a seizure.

19 Q Did you give him any advice as to what to do?

20 A I did. I just said, calm down, you know, just talk
21 to me a little bit. And then I said, Brandon, if there is
22 anything that you haven't told these officers you have got
23 to tell it now. No matter what happens, you have got to
24 tell it now.

25 Q And how long had Brandon been living with you?

1 A Most of his life. My husband worked on an offshore
2 oil rig and was gone a month and at home a month. And his
3 daddy was gone and Erica would stay with her mama and
4 Brandon with me because we was both by ourselves.

5 Q So, he had been staying with you a good many years?

6 A Yes.

7 Q Thank you. Answer any questions they may have.

8 CROSS-EXAMINATION

9 By Ms. Mayes:

10 Q So, Ms. Starnes, if I understand correctly when you
11 first got the call from your grandson he was at Self
12 Hospital, correct?

13 A Yes.

14 Q And that was about 5:15 in the morning, correct?

15 A Yes.

16 Q So, are you aware now that he had been at the
17 hospital since about 1:30 that night?

18 A Yes.

19 Q So, he had been at the hospital about three or four
20 hours. Did he tell you what the doctors had talked with
21 him about?

22 A He said that he, the baby was real sick, he didn't
23 say what the doctor, I didn't know the doctors were there
24 at the time. He just briefly told me that and I said I
25 will be there.

1 Q Okay. So at that point he was telling you that the
2 baby was sick and that they didn't know what was wrong
3 with it, correct?

4 A I don't know if he said they didn't know what was
5 wrong. He said the baby was, he found the baby real sick,
6 unresponsive I think is what he said.

7 Q So, he didn't let you know at that time that the baby
8 had been abused?

9 A No.

10 Q All right. And then when you went down to the
11 sheriffs department that would have been about what time?

12 A Well, Stephon Williams called me at five minutes
13 after nine because I couldn't find Brandon and I went home
14 to wait on a call.

15 Q Five minutes after nine in the morning?

16 A Yes, ma'am.

17 Q And did you know that Brandon had already given one
18 sworn statement to law enforcement?

19 A I don't, I didn't.

20 Q So, he didn't talk with you about that?

21 A Mr. Williams, I didn't talk with Brandon at that
22 time. Mr. Williams just called me and ask if I could
23 come.

24 Q So at that point and time you weren't aware of what
25 stories he had told and who he had told them to?

1 A No, ma'am.

2 Q Nothing further.

3 THE COURT: Mr. Able.

4 CROSS-EXAMINATION

5 By Mr. Able:

6 Q Did Brandon tell you that he had talked to a lot of
7 people that morning?

8 A Yes, he did.

9 Q And did he tell you what the substance of those
10 conversations were?

11 A Yes, he did.

12 Q And he told you that he spoke to Officer Garrison?

13 A Repeat the last name.

14 Q Officer Garrison, the officer that testified he was
15 the first one to speak to him at Self?

16 A I don't remember that name.

17 Q Did he tell you he had talked to Dr. Curry, the ER
18 doctor?

19 A I can't remember that name.

20 Q Okay. Did he tell you he had talked to Dee Deal, the
21 DSS worker?

22 A Yes.

23 Q Did he tell you he had talked to Chaplain Alexander
24 Brown?

25 A No.

1 Q Did he tell you he had given the first statement to
2 Mr. Ben Blackmon?

3 A I think he had just given that statement when I got
4 there from what they told me.

5 Q Did he tell you at all what the substance of what his
6 conversation with all of these people earlier that
7 morning?

8 A They was asking him what had happened to the baby.

9 Q And he said he told them?

10 A He said he told them he didn't know.

11 Q So he didn't tell you that he had told all of these
12 people that he was the only one awake that morning?

13 A Yes, he did.

14 Q Oh, he did?

15 A Yes, sir.

16 Q And did he tell you that he told all of these people
17 that morning that Ashley was in the bed asleep?

18 A Yes.

19 Q And did he tell you that he was the last one in
20 there, that he had told all of these people he was the
21 last one in there with Victim that morning?

22 A He told me that he went in there to check on her
23 before going to bed and that he found her unresponsive, I
24 don't know the word he used but it wasn't unresponsive.

25 Q So, it was only after he talked to you that he gave

1940

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions

Honorable Robert Adly, Jr., Circuit Court Judge

Case No.10-GS-30-1929

State of South Carolina Respondent.

VS

Richard Brandon Lewis Appellant

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VOLUME III

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INDEX

Indictment	1
Defendant's Exhibit #2 (Voluntary Statement)	2
State's Exhibit #30 (Voluntary Statement)	3
Defendant's Request to Charge No. 2	5
Transcript of Testimony (except for pages 22-234, 254-258, 566-571)	6

1 this statement?

2 A Yes, sir.

3 Q And that was a lot different than the first
4 statement, are you aware of that now?

5 A No sir, he just added more to it.

6 Q Now, your grandson has been living with you a long
7 time?

8 A Has he been living with me?

9 Q He has been living with you a long time?

10 A Yes, sir.

11 Q You know him pretty well?

12 A Yes, sir.

13 Q You know that on September the 20th of 2009 on his
14 Myspace page he had posted he didn't want children?

15 A He didn't want what?

16 Q He didn't want children, he didn't want children?

17 A No sir, I am not into the computers.

18 Q You don't know that he had put on his--

19 MR. WISE: Your Honor, unless he asked her if she has
20 seen the Myspace page or Facebook page, she has no basis,
21 he needs to establish if she has seen that page first.

22 THE COURT: Sustained.

23 Q You have never seen his Myspace page?

24 A No, sir.

25 Q So you don't know what he has on it?

1 start interviewing Brandon Lewis, maybe about an hour
2 before that?

3 A I say approximately about an hour before that, that
4 is correct.

5 Q So, you wouldn't have been present for the earlier
6 interviews with Investigator Blackmon?

7 A No, ma'am.

8 Q Or any of the other officers like Garrison?

9 A No, ma'am.

10 Q All right. So, at this point you weren't aware of,
11 all of the different stories or the changing stories that
12 had been told by Brandon Lewis?

13 A I was not.

14 Q And you pretty much typed up what he was telling you
15 as it went?

16 A Verbatim and then let him read it afterwards.

17 Q And he didn't never mention to you anything about the
18 white towel in the crib or how the white towel got there?

19 A Not to my knowledge.

20 Q Nothing further.

21 THE COURT: Mr. Able.

22 MR. ABLE: No questions, Your Honor.

23 THE COURT: You can step down.

24 MS. MAYES: Your Honor, can we approach?

25 THE COURT: Please.

1 (Whereupon, a bench conference was held in the
2 presence of the jury but out of the hearing of the
3 jury.)

4 MR. WISE: Call Robert Plaxico.

5 THE COURT: You have testified previously, correct?

6 MR. PLAXICO: Yes, sir.

7 THE COURT: Have a seat. Again, ladies and
8 gentlemen, as I have instructed you of the last witness
9 who previously you heard testimony about a statement, this
10 witness collected from another individual involved in this
11 case. At the time that the statement was first heard the
12 rules prohibited introduction of the full statement until
13 later in the trial. Now, it is the proper time for you to
14 hear the full statement. And, again, I don't want you to
15 get the impression that anyone was keeping this statement
16 from you. You may proceed.

17 DIRECT EXAMINATION

18 By Mr. Wise:

19 Q Please give us your full name.

20 A Robert Plaxico.

21 Q And how long have you been with the Laurens Sheriffs
22 Department?

23 A 18 years.

24 Q You were the lead investigator in this case?

25 A Yes, sir.